

Report on the

OIL AND GAS BOARD

Tuscaloosa, Alabama



Department of Examiners of Public Accounts

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September 28, 2005

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the State Oil & Gas Board in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the State Oil and Gas Board in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

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PROFILE

Purpose/Authority:

The board is charged to prevent the waste of oil and gas resources and to protect correlative rights of owners (rights associated with ownership interests in property, mineral, or royalty, and rights relative to the exploration and development of oil and gas resources). This authority is provided in the ***Code of Alabama 1975***, Sections 9-17-1 through 9-17-88 and 9-17-130 through 9-17-157. The board operates a program of regulation and inspection of oil and gas drilling and production activity and maintains detailed well data and well cuttings and cores for use by interested persons.

The board is also charged with determining the qualification of enhanced recovery wells for reduced severance taxes as well as the amount of production eligible for the reduced rate. This authority is provided in ***Code of Alabama 1975***, Sections 40-20-1 and 2 as amended.

In addition to the powers and duties set forth in Alabama statutes, the board has been designated to administer the Underground Injection Control Program for Class II wells pursuant to Section 1425 of Part C of the Safe Drinking Water Act, ***Public Law 93-523***, as amended. The board's powers and duties in this area are derived through a memorandum of agreement with the U.S. Environmental Protection Agency (EPA) relative to the protection of sources of drinkable water which could be threatened by the injection of matter (liquid or gas) used in Class II wells. Should the board not carry out these duties, they would be performed by EPA.

The board shares premises, some employees, and other resources with the Geological Survey of Alabama. A single chief executive officer serves both agencies.

Board Characteristics

1. Members	3
2. Terms	6 years staggered
3. Selection	Appointed by the governor
4. Qualifications	Resident of Alabama Qualified voter
5. Minority Race Representation	No statutory requirement No minority race members
6. Geographical Representation	No Statutory requirement
7. Compensation	Annual salary - \$10,226.40 Travel and office expense - \$500.00 per month

Operations

1. Executive Officer	The State Geologist, who is appointed by the President of the University of Alabama with the approval of the governor, is also designated the State Oil and Gas Supervisor and serves as ex officio secretary for the board. The State Geologist receives \$102,071.32 annually in that position and an additional \$10,226.40 annually as the Oil and Gas Supervisor.	
2. Location	<u>Main Office</u> 420 Hackberry Lane P.O. Box 869999 Tuscaloosa, Al 35486-6999	<u>Mobile Regional Office</u> 4173 Commanders Dr. Mobile, Al 36615-1421
3. Examinations	There are no examinations.	
4. Permits	The board issues a one time permit to drill each well.	
5. Renewals	None	
6. Continuing Education	None	
7. Employees (6/15/2005)	Oil & Gas Supervisor – non-merit system...1 Merit System Classified.....41 Minority Race Employees.....5	
8. Legal Counsel (Full-time)	Assistant Attorney General – S. Marvin Rogers	
9. Subpoena Power	Yes, both records and people, <i>Code of Alabama 1975</i> , Section 9-17-8	
10. Internet Presence	Web Site: http://www.ogb.state.al.us	

Financial

1. Fees	Drilling permit fees, filing and recording fees, coalbed methane well plugging surety fees, and forfeited bonds
2. State Treasury	Yes

3. Unused Funds	<p><u>General Fund Account</u> – Year-end balance reverts to the General Fund.</p> <p><u>Fund 337</u> Oil and Gas Board Special Revenue Fund – Unused funds are retained.</p> <p><u>Fund 574</u> Oil and Gas Board Surety Bonds/Reclamation Projects Fund – Unused funds are retained. Funds can only be used for the plugging and restoration of abandoned wells/well sites.</p> <p><u>Fund 600</u> Coalbed Well Plugging Fund - Unused funds are retained. Funds can only be used for plugging abandoned Coalbed Methane wells.</p>
4. Source of Funds	<p><u>General Fund Account</u> – General Fund Appropriations</p> <p><u>Fund 337</u> – Drilling Permit Fee, Petition Filing Fee and Coal Group Fracture Fee</p> <p><u>Fund 574</u> - Bond Forfeitures (conventional wells), can only be used for the plugging and restoration of abandoned wells/well sites.</p> <p><u>Fund 600</u> - Coalbed Well Plugging Fee can only be used for plugging abandoned coalbed methane wells.</p>

SIGNIFICANT ITEM

According to the board, as the board loses technical employees through attrition, hiring and retaining qualified employees will be difficult. Responses to our questionnaire by two of the three board members state that oil and gas activity is currently very high in Alabama with new areas of opportunity being either tested or considered by the gas industry. The board responses indicate that this condition is occurring at a time when many of the board's experienced employees are eligible to retire and that finding candidates for employment by the board who are qualified in technical disciplines such as petroleum geology and petroleum engineering is difficult, even at the entry level. The board's responses further stated that salary levels within the current merit system classifications are not attractive to potential candidates. The two responding board members indicate that this is the most significant issue facing the board.

Response: At the present time, there is a nationwide shortage of petroleum professionals, including professionals in petroleum geology and engineering, as noted. This is especially acute when considering experienced, mid-career professionals down through new graduates with degrees emphasizing petroleum specialties. This situation results from several factors, including the historic "boom-or-bust" cycles that have characterized the petroleum industry. Enrollments (and, therefore, graduations) in petroleum curricula have been declining for a number of years, during which energy prices and industry activity have been much lower than at present.

Over the past couple of years, energy prices have increased dramatically, they remain high at present, and they are forecast to remain high into the foreseeable future- This, in turn, has led to a significant increase in industry activity and renewed opportunities in the industry for professionals with the appropriate backgrounds and experience. There is a greatly increased demand for these professionals and private industry is paying generous salaries for their services. This is the current environment in which we must compete for technical professionals in the petroleum disciplines. These professionals are in short supply and those available are demanding top dollar for their services-Alabama, because of a diversity of oil and gas exploration and development opportunities, is benefiting from increased oil and gas activity. Severance tax collections for the first 10 months of FY05 have already exceeded collections for any previous year, with two months left to go. Coalbed methane gas activity in the Black Warrior basin of north Alabama continues to be robust and there is current drilling to test the potential for other unconventional resources, such as shale gas and gas from low permeability sands. Activity for conventional oil and gas resources is also high and we have a major new oil development in south Alabama.

As pointed out in the Board member responses, the State Oil and Gas Board has a very experienced, very capable, yet very mature staff. Many staff members are retirement eligible or soon will be. Although we have begun a process of bringing in new staff members to mentor into key positions, it is not an easy task. As noted above, professionals with training, expertise, background, and/or experience in petroleum disciplines are not plentiful and the job market for these professionals is very competitive. Although in some cases it is possible to identify and recruit a candidate, it is difficult and time consuming to work through the system to get into a position to actually extend a job offer. Further, salaries within our system are often not competitive within the job market that exists today for these individuals.

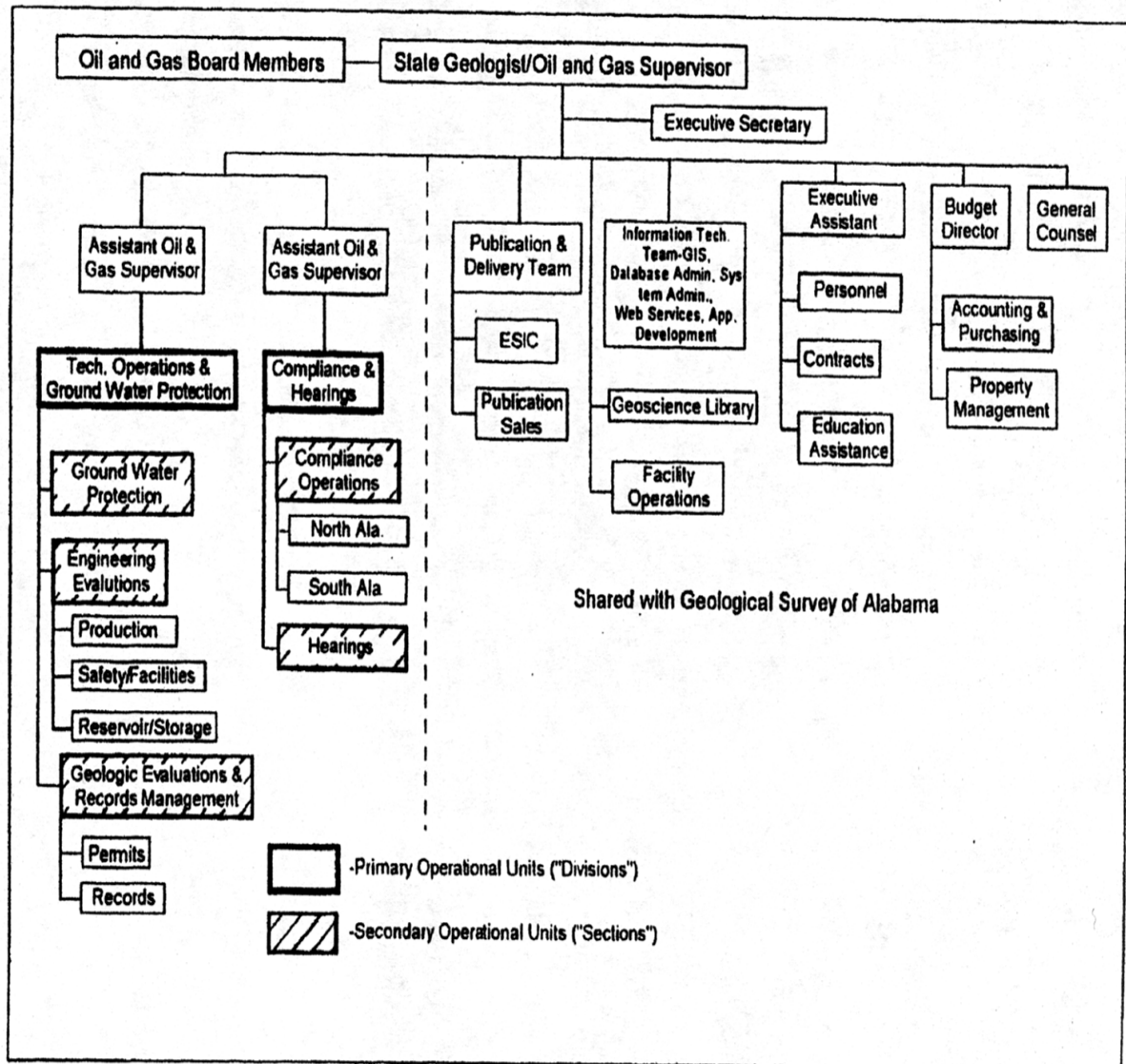
The State Oil and Gas Board will work with the State Personnel Department to seek solutions that will address the issues related to classifications, salaries, hiring, and retention. We will continue to seek out quality candidates for employment at our agency and encourage them to submit applications for State Personnel classifications appropriate to our needs. Where we can, we will hire these qualified candidates and do our best to promote a work environment that will encourage them to remain in careers of state government service.

STATUS OF PRIOR FINDINGS

All prior findings have been resolved.

ORGANIZATION

OGB Organization



PERSONNEL

With the exception of the three board members and the State Oil and Gas Supervisor, all employees of the board were hired as classified employees under the provisions of the state's merit system law. Some employees perform duties for both the Oil and Gas Board and the Geological Survey.

Employee Classifications **With Race and Gender Noted As of June 15, 2005**

Employee Title	#	Race/Gender
State Geologist/Oil & Gas Supervisor (1)	1	1 W/M
Board Members	3	2 W/M; 1 W/F
Hearings Reporter	1	W/F
Administrative Support Assistant II	3	3 W/F
Graphic Arts Specialist	1	W/M
IT Systems Specialist, Associate	1	W/M
Accounting Manager	1	W/F
Personnel Assistant	1	B/F
Attorney IV	1	W/M
Student Aide	4	1 B/F; 2 W/F; 1 W/M
Cartographic Specialist, Senior	1	W/F
Cartographic Supervisor	1	W/M
Oil & Gas Field Agent	6	6 W/M
Petroleum Engineer II	4	1 B/M; 1 W/F; 2 W/M
Oil & Gas Board Manager I	3	3 W/M
Oil & Gas Board Manager II	2	2 W/M
Geologist II	4	3 W/M; 1 W/F
Geologist III	1	W/M
Custodial Worker	1	B/M
Plant Maintenance Worker	1	B/M
Maintenance & Repair Supervisor	1	W/M
Oil & Gas Board Total	42	2 B/F; 3 B/M; 11 W/F; 26 W/M
Geological Survey Total	35	2 B/F; 1 B/M; 6 W/F; 23 W/M; 3 O/M
Grand Total	77	4 B/F; 4 B/M; 17 W/F; 49 W/M; 3 O/M

F= Female M= Male B= Black W= White A= Asian O= Other

(1) The position of Oil & Gas Supervisor is an ex officio position based on appointment to the position of State Geologist.

PERFORMANCE INFORMATION

Growth of Oil & Gas Industry in Alabama

Growth Indicator	1970	1980	1990	2000	2004
PRODUCTION					
No. Fields & Pools	24	119	412	525	548
No. Producing Wells	564	998	3,253	4,144	5,275
Oil (Million barrels)	7.4	10.9	8.3	6.1	4.6
Condensate (Million Barrels)	.02	11.6	10.1	4.6	2.8
Gas (Billion Cubic Ft.)	1	109	182	413	347
National Ranking - Oil & Condensate	21 st	18 th	15 th	15 th	15 th
National Rank - Gas	26 th	16 th	12 th	9 th	9 th
REVENUES & FUNDS (\$ millions)					
Severance Tax	1.324	36.480	45.042	68.341	101.184
Investment Income from Trusts	N/A	N/A	102.250	136.819	98.540
Oil & Gas Proceeds to Trusts	N/A	N/A	5.172	157.577	263.460
Total	1.324	36.480	152.464	362.737	463.184
Trust Fund Balance	---	---	937.013	1,884.452	2,413.000

Source: State Oil & Gas Board

Performance Indicators

	2004	2003	2002	2001
Items on Oil and Gas Board Monthly Agenda	250	288	222	345
Number of Orders Issued	152	150	126	222
Number of Field Inspections	13,247	13,879	14,329	17,095
Number of Wells Permitted	542	436	498	316
Number of Producing Wells	20,475	19,125	18,250	4,400
Number of Producing Fields	745	765	764	190
Number of Producing Pools	1,085	1,085	1,085	265
Oil Production (Million Barrels)	4.8	5.1	5.46	5.8
Condensate Production (Million Barrels)	3	3.1	3.8	4
Natural Gas (Billion Cubic Feet)	361	389	390	391
Internet Home Page Usage	40,103	30,598	21,152	16,563

Source: State Oil & Gas Board

Inspecting and Monitoring Field Operations

Operations performed to drill, produce, complete, inject into or plug an abandon well are monitored and routinely inspected by the board's field agents. Inspections of newly permitted wells are made periodically during the first few weeks of operation and continue until the well is either producing or plugged. After a well is brought online, inspections are needed less often. Inspections of active or producing oil and gas wells are made approximately every six months. Underground injection wells are inspected quarterly. Pressure tests to measure the mechanical integrity of wells are required at a minimum of once every 5 years.

Inspections are conducted to insure that procedures used by the oil and gas industry in Alabama conform to the board's rules, regulations, and orders. Operators are required to routinely notify the board's staff concerning operations performed on wells including spudding, testing, setting casing, and plugging. Each of these operations must be approved by a representative of the Oil and Gas Supervisor prior to their implementation, thus allowing the staff opportunity to evaluate, record, and if necessary, witness the proposed operation.

Field agents prepare violation reports onsite, and the violator, if still present, is required to sign the report indicating its correctness. Field agents photograph or videotape serious violations.

Underground Injection Control Wells

In addition to regulation of exploration and production wells, the board is responsible for administering the Federal Underground Injection Control Program (UIC). Wells used for either enhancing the recovery of hydrocarbons, disposing of fluids associated with oil and gas operations, or storing of liquid hydrocarbons are classified as Class II underground injection control wells by the U. S. Environmental Protection Agency. Wells in this category must be permitted and operated in accordance with federal and state regulations designed to protect underground sources of drinking water. The board has adopted separate rules for underground injection control Class II wells in Rule 400-4-1 et al, of the board's Administrative Code.

Enforcement

Reports of violations received from inspectors and field agents are submitted through the Operations Division, to the Oil and Gas Supervisor, and a determination is made as to the severity of the violation. The Supervisor then notifies the operator responsible for the violation in writing that a "Supervisor's conference" will be held to review the violation; giving the time, date, location, and purpose. After the Supervisor's conference, the violator is advised by the Supervisor of intended recommendations relative to the violation. The violator is allowed the opportunity to voluntarily accept and comply with the supervisor's and staff's recommendation without going before the board. If the violator decides not to accept, a formal hearing is scheduled before the board.

The *Code of Alabama 1975*, Section 9-17-17 authorizes the board or its representatives to cause persons violating board statutes, rules and regulations, or orders, to cease the offending activities, and in some cases to cease operations.

Disciplinary Actions
Fiscal Years 01/02, 02/03, 03/04 and 04/05

Violation/Description	Supervisor Conference	Action Taken	Status
Underground Injection Control (Injection of Fluids); Protection of Freshwater Resources	7/10/01	Fined: \$3,000 Paid: \$3,000	Concluded
Escambia Counties Facilities	8/29/01	No Fine Issued	Concluded
Blow out Prevention; Special Field Rules	8/21/02	No Fine Issued	Concluded
Permit Requirements	12/3/02	No Fine Issued	Concluded
Hydraulic Fracturing Operating	None	Referred to Board Fined: \$5,000 Paid: \$5,000	Concluded
Well Permits; Approval of Activities	4/14/03	Fined: \$1,000 Paid: \$1,000	Concluded
Notification of Fire, Spill, Leak or Blow Out	5/13/03	No Fine Issued	Concluded
Ownership or Control	2/27/04 (No Conference)	Fined: \$1,000 Paid: \$1,000	Concluded
Rules Violation	7/08/04	Fined: \$500 Paid: \$500	Concluded
Notification of Fire, Spill, Leak or Blow Out	10/26/04	Fined: \$500 Paid: \$500	Concluded
Notification of Fire, Spill, Leak or Blow Out	3/09/05	Fined: \$500 Paid: \$500	Concluded
Rules Violation	5/11/05	Fined: \$3,000 Paid:	Pending

COMPLAINTS

Inquiries/complaints that have been received are related to royalty payments due the land owner and contamination of wells resulting from fracturing procedures. The following table presents the results of board activity regarding complaints that has occurred during the past four years.

Inquiry/Complaint	Oil and Gas Board's Action
Injection well impacted the quality of water pumped from a residential water supply well	Performed tests on water samples collected. Determined that injection wells in the area of the complainant had no impact on the quality of water being pumped from the residential water supply.
Royalty payments not paid according to contractual schedule	The State Oil and Gas Board does not have the authority to require royalties to be paid. Suggested the matter be referred to a private attorney.
Royalty payments not received for gas pulled from under property.	No action noted.
Royalty payments not received for gas pulled from under property.	No action taken.
Failure to pay royalties in a timely manner	Operator notified of the land owner's complaint.
Operator failure to pay working interest in well	Suggested that the complainant retain an attorney to address the operator's failure to pay the working interest.

FINANCIAL INFORMATION

The operations of the board are financed primarily through appropriations from the state's General Fund, supplemented by collections authorized by statute. The board operates through the State Treasury from the following funds.

General Fund Account - Used to account for expenditure of amounts appropriated to the board from the State's General Fund.

Special Revenue Fund 337 - Oil and Gas Board Special Fund - Used to account for collection and expenditure of drilling permit and notice filing fees.

Special Revenue Fund 574 - Oil and Gas Board Surety Bonds/Reclamation Projects - Used to account for bond forfeitures and for expenses associated with plugging abandoned conventional oil and gas wells and for abandoned well site restorations.

Special Revenue Fund 600 - Coalbed Gas Well Plugging Fund - Used to account for the receipt and expenditure of plugging fees collected by the board for coalbed methane wells drilled since April 25, 1990.

Schedule of Fees

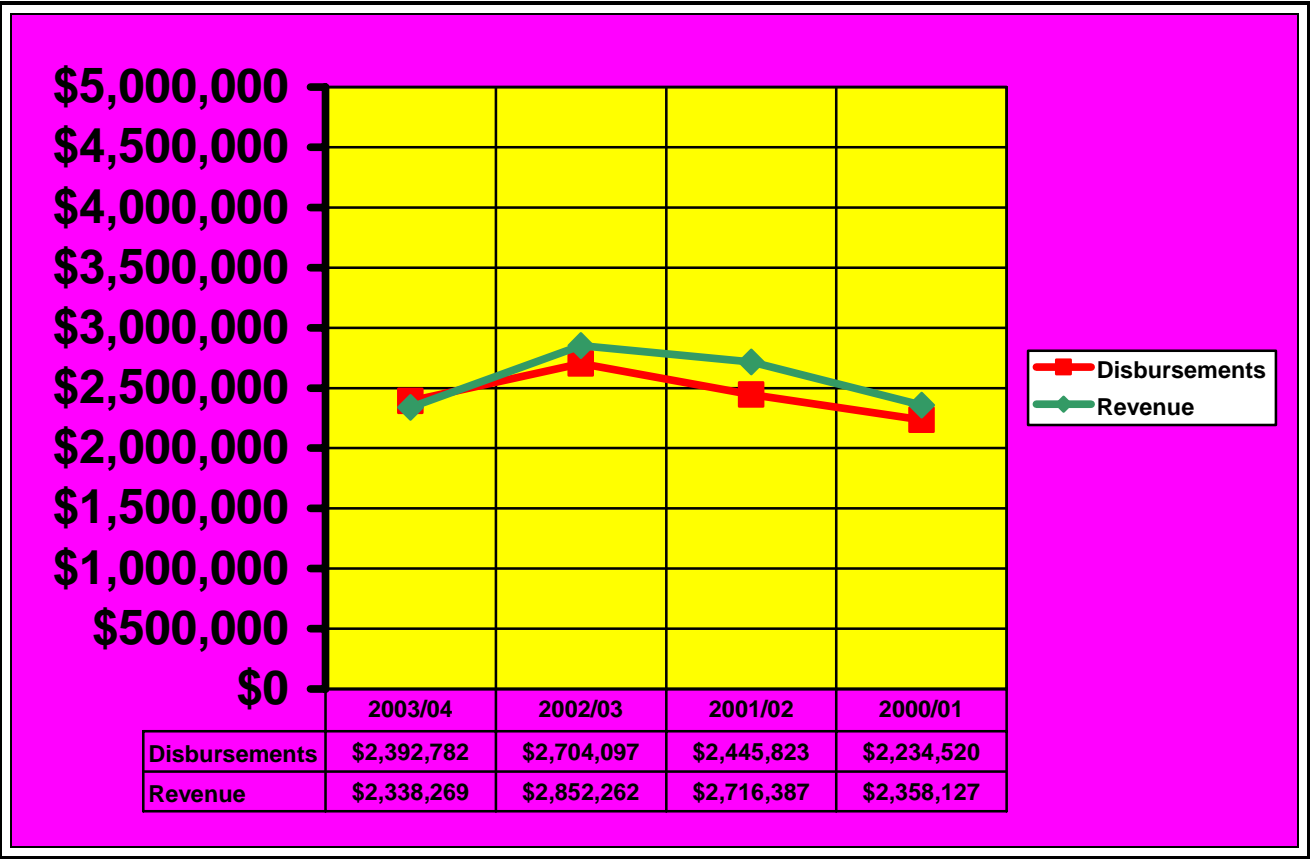
Type	Amount Charged	Statutory Authority
Drilling Permit Fee	\$300	9-17-24(a)
Petition Filing Fee	\$150	9-17-24(b)
Coal Group Fracture Fee	\$175 (Statutory limit \$250)	9-17-24(c)
Coalbed Methane Gas Well Plugging Fee	\$150	9-17-137
Fines	Maximum \$10,000 /day	9-17-32

Schedule of Cash Receipts, Disbursements and Balances

For the Period October 1, 2000 through September 30, 2004

	2003/2004	2002/2003	2001/2002	2000/2001
<u>Receipts</u>				
State General Fund	\$ 1,812,127.00	\$ 2,209,911.00	\$ 2,159,639.00	\$ 2,157,987.00
Drilling Permits	164,400.00	133,200.00	146,100.00	99,900.00
Filing/Recording Fees	19,500.00	20,850.00	16,650.00	24,750.00
Prior Year Refunds	48.44	13,737.50	10,060.78	1,874.39
Interest Income	6,637.69	12,810.47	9,886.96	32,515.25
Federal Grants	72,472.13	185,852.87	122,500.00	
Coal Bed Methane Well Plugging Fees	67,350.00	57,450.00	187,800.00	41,100.00
Hydraulic Fracturing Fees	190,575.00	218,450.00	63,750.00	
Miscellaneous	5,158.65			
Total Receipts	2,338,268.91	2,852,261.84	2,716,386.74	2,358,126.64
<u>Disbursements</u>				
Personnel Costs	1,723,989.92	1,831,677.03	1,693,768.33	1,597,379.63
Employee Benefits	402,974.13	387,653.13	357,657.85	321,393.79
Travel-in-State	11,468.50	16,959.75	18,567.00	14,334.13
Travel-out-of-State	1,006.21	3,235.90	914.50	852.14
Repairs and Maintenance	11,148.21	9,294.72	15,543.49	17,523.13
Rentals and Leases	20,779.51	21,721.20	18,909.77	20,568.46
Utilities and Communications	61,315.83	89,166.56	63,654.62	58,615.91
Professional Services	65,615.17	49,763.57	18,654.14	55,505.96
Supplies, Materials, and Operating Costs	65,181.33	73,114.55	94,811.79	51,979.18
Transportation Equipment Operations	28,699.21	26,965.37	23,135.11	61,922.21
Transportation Equipment Purchases		89,147.20	126,556.88	
Other Equipment Purchases	604.20	105,398.27	13,649.24	34,445.55
Total Expenditures	2,392,782.22	2,704,097.25	2,445,822.72	2,234,520.09
Excess (deficiency) of Receipts over Disbursements	(54,513.31)	148,164.59	270,564.02	123,606.55
Cash Balances at Beginning of Year	1,391,630.34	1,315,448.02	1,072,660.49	951,087.06
Reverted to General Fund	(42,455.32)	(71,982.27)	(27,776.49)	(2,033.12)
Cash Balances at End of Year	1,294,661.71	1,391,630.34	1,315,448.02	1,072,660.49
Reserve for Plugging Abandoned Wells	(932,653.54)	(858,665.85)	(788,405.38)	(714,768.42)
Reserve for Year End Obligations	(38,458.39)	(48,223.32)	(210,422.89)	(87,866.41)
Unobligated Cash Balances at Year End	\$ 323,549.78	\$ 484,741.17	\$ 316,619.75	\$ 270,025.66

Receipts vs. Operating Disbursements



QUESTIONNAIRES

Board Members

Questionnaires were mailed to three board members on June 1, 2005. Two responded.

Question #1

Which Board services, if no longer provided would be a detriment to public welfare?

- The services provided by the State Oil and Gas Board of Alabama are crucial to the State. Since 1945 the Board has fairly and reasonably regulated oil and gas operations, and the oil and gas industry has grown into one of the State's major industries and one of the State's principal sources of revenue. None of the services provided by the Board could be eliminated for the Board to perform the duties properly.
- The services provided by the State Oil and Gas Board of Alabama are crucial to the State. Since 1945, the Board has fairly and reasonably regulated oil and gas operations. Consequently, during that period, the oil and gas industry has grown into one of the State's major industries and one of the State's principal sources of revenue. In order for the Board to perform its duties properly, none of the services provided by the Board could be eliminated.

Question #2

What, if any, changes in Alabama laws regulating the oil & gas industry would you recommend?

- The Board recommends no changes at this time.
- The Board recommends no changes at this time.

Question #3

What is the most significant issue currently facing the board?

- Oil and gas activity is very high at present, as reflected in new drilling permit applications, severance tax collections to the State, petitions to the Board, and other areas. In addition, there is significant potential for these activities to increase further in the near future. Several new areas of opportunity are being either tested or considered by the oil and gas industry at the present time. The board has a very

Board Members Questionnaire

experienced and capable staff, but many key employees are eligible to retire over the next few years.

Finding qualified candidates in key technical disciplines, such as petroleum geology and petroleum engineering, even at entry level, is difficult and the difficulty is often compounded by the intricacies of the State personnel and Merit systems. Further, current salary levels within the pertinent State classifications are often not attractive to candidates. This will be a progressive significant issue for the Board as we loose current staff members to attrition over the next few years.

- Oil and gas activity is very high at present, as reflected by, among other things, the number of new drilling permit applications, the level of severance tax collections by the State, and the number of petitions with the Board. In addition, there is significant potential for these activities to increase further in the near future. Several new areas of opportunity are being either tested or considered by the oil and gas industry at the present time. The Board has a very experienced and capable staff, but many key employees are eligible to retire and will retire over the next few years.

Finding qualified candidates in key technical disciplines, such as petroleum geology and petroleum engineering, is difficult. The difficulty is often compounded by the intricacies of the State personnel and Merit systems. Further, current salary levels within the pertinent State classifications are often not attractive to candidates and the Board simply cannot compete with the private sector for qualified employees.

This will be a progressive significant issue for the Board as we loose current staff members to attrition over the next few years.

Question #4

What is the board doing to settle this issue?

- The Board, through the Oil and Gas Supervisor, is beginning a process to identify and recruit potential candidates for employment in key technical positions.
- The Board, through the Oil and Gas Supervisor, is beginning a process to identify and recruit potential candidates for employment in key technical positions.

Question #5

Is the board adequately funded? If not, what actions should be taken to remedy the situation?

- If the Board receives the General Fund appropriations recommended in the Governor's FY06 budget, current needs, other than deferred maintenance of the Board's physical plant (primarily HVAC and energy efficiency issues), will be adequately funded. However, if oil and gas activity (permitting, drilling, petitions to the Board, etc.) continues to increase, as noted in Question 3 above, additional funds for staff and operations will be necessary.
- If the Board receives the General Fund appropriations recommended in the Governor's FY06 budget, current needs, other than deferred maintenance of the Board's physical plant (primarily HVAC and energy efficiency issues), will be adequately funded. However, if oil and gas activity (permitting, drilling, petitions to the Board, etc.) continues to increase, as noted in Question 3 above, additional funds for staff and operations will be necessary in order to provide core services.

Question #6

What is the purpose of your board's fiscal year end fund balance?

- The Board's main funding source is an annual State general fund appropriation, which has no year end fund balance. Any funds remaining at year's end revert to the state. The Oil and Gas Special Fund, which is primarily funded by fees for various Board activities (permits, petitions to the Board, etc.) and is subject to sometimes significant yearly fluctuations based on levels of oil and gas activity, has a year-end fund balance, which is carried forward to be used as necessary for agency operations, unexpected expenditures, legal expenses, etc. The Coalbed Methane Well Plugging Fund year-end balance is carried forward yearly and can be used only for plugging abandoned wells as needed.
- The Board's main funding source is an annual State general fund appropriation, which has no year end fund balance. Any funds remaining at year's end revert to the state.

The Oil and Gas Special Fund, which is primarily funded by fees for various Board activities (permits, petitions to the Board, etc.) and is subject to sometimes significant yearly fluctuations based on levels of oil and gas activity, has a year-end fund balance, which is carried forward to be used as necessary for agency operations, unexpected expenditures, legal expenses, etc. The Coalbed Methane Well Plugging Fund year-end balance is carried forward yearly and can be used only for plugging abandoned wells as needed.

Operators

Questionnaires were mailed to 117 oil and gas operators identified to us by the State Oil and Gas Board. 60 responded.

Question #1

What type producer wells do you drill/operate? (Please indicate the number of wells by type operated by your company in Alabama.)

- | | |
|--------------------|--------------|
| • Coalbed | 3,232 |
| • Conventional Gas | 205 |
| • Gas Condensate | 26 |
| • Oil | 178 |
| • Disposal | 19 |
| • Other | 49 |

Question #2

Do you think regulation of the oil and gas industry by the Alabama State Oil and Gas Board is necessary to protect public welfare?

- | | |
|------------|-----------|
| Yes | 51 |
| No | 6 |
| Undecided | 2 |
| No Opinion | 1 |

Question #3

Do you think the laws, rules, and policies regulating the oil and gas industry in Alabama constitute an unnecessary restriction on the oil and gas industry?

- | | |
|------------|-----------|
| Yes | 12 |
| No | 5 |
| Undecided | 34 |
| No Opinion | 9 |

- The hydraulic fracturing regulations introduce costs and delays, which supposedly enhancing environmental quality, in fact add little, if any value. The laws are the most stringent in the nation.

Question #4

Are you adequately informed in a timely manner of changes to and interpretations of board positions, policies, rules and law concerning oil and gas operations in Alabama?

Yes	41
No	8
Undecided	9
No Opinion	0

- Send via email or fax rather than US Mail.

Question #5

What do you think is the most significant issue currently facing the oil and gas industry in Alabama?

- Restriction of fracturing fluids and adequate money for the Oil and Gas Board to conduct its business
- Protection of fresh water zones
- Force Pooling – Integration requirements are too stringent – There are instances of less than 1% of the mineral ownership has delayed the realization and drilling for the majority for months.
- Gas balancing
- Capital
- Use of new technologies/practices to increase life of marginal wells
- No opinion
- Air emissions regulated by ADEM
- Decline production
- Adequate OGB staff to ensure oversight of regulatory and safety issues
- Restore confidence in business to make future investment decisions. (Current litigation issues state-wide and uncertain tax structures).
- Length of response time too long
- The access to well information including logs via the internet
- Environmental regulations and taxes

Operators Questionnaire

- Lack of development and lack of staff at the Oil & Gas Board, no replacements for personnel, under staffed, under funded for the board to operate. High severance taxes.
- We need drilling incentives in the form of ser. tax relief for new wells. Other states help & encourage our industry. Alabama does not!
- Ability to develop prospects due to environmental regulations & restrictions
- New large scale projects need to be identified in order for growth to continue. Are any projects or prospects exists?
- High prices
- Hydraulic fracturing legislation
- Funding & staffing the OGB so they can perform more efficiently
- Adequate, dependable, consistent funding for the Alabama State Oil and Gas Board. Industry pays a tax specifically for this purpose, the majority of which is diverted for other uses by the state legislature.
- Over regulation by the EPA
- Undue & too restrictive regulations. Taxes too high.
- The Board needs to help the industry not hurt it!!
- Drilling rig availability or lack thereof
- Staff and inspectors expanding their “discretionary powers” beyond the published rules
- Staff and inspectors adopting policies which go beyond the approved state rules and regulations.
- Lack of funding for the State Oil and Gas Board out of the existing Title 9 Production Tax all producers pay. The Title 9 Tax will generate in excess of \$30 million specifically for operating the OGB. The annual appropriation for the OGB is currently only \$2.2 million.
- Controlling costs
- Need to be more friendly to producers
- The staff for South Alabama is too often unreasonable in the rules they adopts. Rules and regulations have to be reasonable.
- Meeting governmental regulations.
- Trying to attract more industry to the state
- The recent billion dollar lawsuit against Exxon appears to a neutral observer to be just harassment to get into Exxon’s deep pockets. Lawsuits like these have a chilling effect on further investment in Alabama by other oil companies.
- Finding new oil & gas reserves
- Oil & Gas Board funding from State of Alabama. Staff & resources are in short supply at the Board.
- Access to drilling & leasing in State waters
- Anti-industry sentiment & reserve decline. Fortunately, the anti-industry push is not nearly as strong as it is in Florida
- Efficient and effective regulation is critical to the oil, gas, and all industries. In order to regulate, agencies must be adequately funded. A special tax (Section 9-17-25) of the Alabama Code is levied on oil and gas production in this state. Although this tax could generate as much as \$34 million in the current fiscal year,

Operators Questionnaire

the oils and gas regulatory agency struggles with funding. This situation needs to be addressed.

- Shortage of prospects
- Operating within all state, federal and local regulations, while maintaining economic production rates.
- Over regulation
- Frac permitting water survey requirements
- Availability of oil and gas service companies and qualified personnel.
- ADEM encroachment into O&G site regulation. No clear jurisdictional lines as in Miss., i.e. O&G Bd. responsible for location and DEQ (MS) for off location problems.
- Staff requirement and lack of replacements at AL O&G Bd.

Question #6

Do you think the board and staff are doing all they can to accommodate the needs of persons who use services of the board?

Yes	37
No Opinion	12
No	4
Undecided	5

- Usually they do; but not always on timely manner

Question #7

Has any member of the board or staff asked for money (other than normal fees), services or any other thing of value in return for the services provided by the board or its staff?

Yes	0
No Opinion	1
No	58
Undecided	1

- Board staff is among the most professional & helpful of any gulf coast state that this company operates in.
- However, the Board will take every opportunity to impose fines for very minor reasons.

APPENDICES

Code of Alabama 1975, Sections 9-17-1 through 9-17-88

ARTICLE 1. CONSERVATION AND REGULATION OF PRODUCTION.

REFERENCES

CROSS REFERENCES

As to privilege tax on production of oils and gas, see § 40-20-1 et seq.

§ 9-17-1. Definitions. [Historical Notes](#)

Unless the context otherwise requires, the following terms shall have the following meanings:

- (1) Board. The State Oil and Gas Board created by this article.
- (2) Developed area or developed unit. A drainage unit having a well completed thereon which is capable of producing oil or gas in paying quantities; however, in the event it is shown and the board finds that a part of any unit is nonproductive, then the developed part of the unit shall include only that part found to be productive.
- (3) Drainage unit. The area in a pool which may be drained efficiently and economically by one well.
- (4) Field. The general area which is underlain or appears to be underlain by at least one pool, and such term shall include the underground reservoir or reservoirs containing crude oil or natural gas or both. The words "field" and "pool" have the same meaning when only one underground reservoir is involved; however, the word "field," unlike "pool," may relate to two or more pools.
- (5) Gas. All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subdivision (9) of this section.
- (6) Illegal gas. Gas which has been produced within the State of Alabama from any well or wells in excess of the amount allowed by any rule, regulation, or order of the board, as distinguished from gas produced within the State of Alabama not in excess of the amount so allowed, which is "legal gas."
- (7) Illegal oil. Oil which has been produced within the State of Alabama from any well or wells in excess of the amount allowed by any rule, regulation, or order of the board, as distinguished from oil produced within the State of Alabama not in excess of the amount so allowed, which is "legal oil."
- (8) Illegal product. Any product of oil or gas, any part of which was processed or derived in whole or in part from illegal oil or illegal gas or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.
- (9) Oil. Crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of a condensation of gas after it leaves the pool.
- (10) Operator. The person who is authorized by the board to operate an oil, gas, or Class II injection well, or production facility, or processing facility, or engages in the transportation of hydrocarbons by pipeline, including the handling and disposal of wastes that may be generated during operation of a well, or production facility, or processing facility.
- (11) Owner. The person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or herself or for himself or herself and another or others.
- (12) Persons. Any natural person, firm, corporation, association, partnership, joint venture, receiver, trustee, guardian, executor, administrator, fiduciary, representative of any kind or any other group acting as a unit.
- (13) Pool. An underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both and each zone of a general structure which is completely separated from any other zone in the structure.
- (14) Producer. The owner of a well or wells capable of producing oil or gas or both; provided, however, that the word "producer" as used in Section 9-17-25 shall also include any person receiving money or other valuable consideration as royalty or rental for oil or gas produced or because of oil or gas produced, whether produced by him or her or by some other person on his or her behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his or her account or a payment in money or other valuable consideration.

(15) Product. Any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(16) Reasonable market demand. As to oil, the amount of oil reasonably needed for current consumption and use, together with a reasonable amount of oil for storage and working stock and, as to gas, the amount of gas of any type reasonably needed to supply the current consumption and use of such type of gas.

(17) Tender. A permit or certificate of clearance, approved and issued or registered under the authority of the board, for the transportation of oil, gas, or products.

(18) Waste. In addition to its ordinary meaning, such term shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include any of the following:

a. The inefficient, excessive or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which results or tends to result in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state.

b. The inefficient storing of oil and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

c. Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate and unratable withdrawals causing undue drainage between tracts of land.

d. Producing oil or gas in such manner as to cause unnecessary water channeling or coning.

e. The operation of any oil well or wells with an inefficient gas-oil ratio.

f. The drowning with water of any stratum or part thereof capable of producing oil or gas.

g. Underground waste however caused and whether or not defined.

h. The creation of unnecessary fire hazards.

i. The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

j. The use of gas, except sour gas, for the manufacture of carbon black.

k. The escape of gas into the open air, from a well producing gas, in excess of the amount which is necessary for safety reasons or for the efficient drilling, testing, and operation of the well.

l. Production of oil and gas in excess of reasonable market demand.

(Acts 1945, No. 1, p. 1, § 2; Acts 1979, No. 79-475, p. 875, § 1; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, in the introductory matter substituted "following terms" for "words defined in this section", and deleted "when found in this article" following "meanings"; redesignated subdivisions (2) through (15) -- including both provisions previously designated as subdivision (9) -- as subdivisions (12), (9), (5), (13), (4), (11), (14), (18), (15), (7), (6), (8), (17), (3) and (2), respectively; in subdivision (4), as so redesignated, substituted "underlain" for "underlaid" in two places, substituted "crude" for "crude petroleum", substituted "have the same meaning" for "mean the same thing", and substituted "unlike" for "unlike the word"; in subdivision (5), as so redesignated, substituted "(9)" for "(3)"; added subdivision (10); in subdivision (11), as so redesignated, inserted "or herself" in two places; in subdivision (14), as so redesignated, inserted "or her" in three places; in subdivision (18), as so redesignated, inserted "any of the following", substituted a period for the concluding semicolon in paragraphs a. through j., and rewrote paragraph k.; and made nonsubstantive changes.

§ 9-17-2. Declaration of public policy; purpose of article. [Annotations](#)

The prevention of waste of oil and gas and the protection of correlative rights are declared to be in the public interest. The purpose of this article is to prevent such waste and to protect correlative rights. (Acts 1945, No. 1, p. 1, § 1; Acts 1969, No. 1033, p. 1916, § 1.)

ANNOTATIONS

CASENOTES

Application 2

Purpose 1

1. Purpose

Basic reason for article is to provide for the pooling of diverse interests into one or more drilling units for the production of oil in order to prevent injury to landowners caused by the removal of oil from under their land by a well located on another's property. *Gulf Oil Corp. v. Deese*, 275 Ala. 178, 153 So.2d 614 (1963).

2. Application

In view of this and the following sections, the reason for the application of the principle that the right to use the surface of land as an incident of ownership of mineral rights does not carry with it the right to use the surface in aid of mining or drilling operations on other or adjoining lands does not exist with respect to the construction and operation of oil wells pursuant to the pooling provisions of the following sections. *Gulf Oil Corp. v. Deese*, 275 Ala. 178, 153 So.2d 614 (1963).

§ 9-17-3. Oil and Gas Board -- Created; composition; qualifications, appointment, terms of office, compensation and expenses of members; vacancies; meetings or hearings; nonvoting member emeritus. [Historical Notes](#) [References](#)

(a) There is hereby created and established a board, to be known as the State Oil and Gas Board, to be composed of three members to be appointed by the Governor for terms of the following duration: one member for a term of two years; one member for a term of four years; and one member for a term of six years. At the expiration of the term for which each of the original appointments is made, each successor member shall be appointed for a term of six years; and, in the event of a vacancy, the Governor shall by appointment fill such unexpired term. Each member shall be eligible for reappointment at the discretion of the Governor. Each member of the board shall be a resident of the State of Alabama and shall be a qualified voter therein. Each member shall qualify by taking an oath of office and shall hold office until his successor is appointed and qualified. The board shall elect from its number a chairman. The board shall meet or hold hearings at such times and places as may be found by the board to be necessary to carry out its duties. Each member of the board shall receive as compensation for his services an annual salary of \$3,600.00 and, in addition thereto, each member shall be entitled to a travel and office expense allowance of \$500.00 per month. The compensation and travel and office expense allowance as above set forth shall be paid from the Oil and Gas Fund.

(b) Any person who has served 19 or more years continuously on the board shall be a nonvoting member emeritus of the board. A member emeritus shall receive no compensation, salary, or travel or expense allowance or reimbursement for his or her service on the board. (Acts 1945, No. 1, p. 1, § 3; Acts 1965, 2nd Ex. Sess., No. 82, p. 112, § 1; Acts 1967, No. 219, p. 584, § 1; Acts 1990, No. 90-104, p. 114, § 3; Acts 1994, No. 94-593, p. 1100, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1994 amendment, effective April 22, 1994, designated the first paragraph as subsection (a) and added subsection (b).

Code Commissioner's Notes

Acts 1990, No. 90-104, § 2 provides: "The existence of the Oil and Gas Board, created and functioning pursuant to Sections 9-17-1 through 9-17-32, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1994, No. 94-593, § 2, provides: "Section 2. The existence and functioning of the State Oil and Gas Board, created and functioning pursuant to Sections 9-17-1 to 9-17-33, inclusive, Code of Alabama 1975, is continued until October 1, 1996."

Acts 1996, No. 96-263, § 2, provides: "The existence and functioning of the State Oil and Gas Board, created and functioning pursuant to Sections 9-17-1 to 9-17-33, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 98-143, § 2 provides: "The existence and functioning of the Oil and Gas Board, created and functioning pursuant to Sections 9-17-1 to 9-17-33, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2002-81, § 2, provides: "The existence and functioning of the State Oil and Gas Board, created and functioning pursuant to Sections 9-17-1 to 9-17-33, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals 92.12.

Corpus Juris Secundum:

C.J.S. Mines and Minerals § 336.


§ 9-17-4. Oil and Gas Board -- Quorum; votes required for promulgation of rules, regulations or orders. [References](#) [Annotations](#)

Two members of the board shall constitute a quorum, but two affirmative votes shall be necessary for the adoption or promulgation of any rule, regulation or order of the board.
(Acts 1945, No. 1, p. 1, § 6.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.12.

Corpus Juris Secundum:

C.J.S. Mines and Minerals § 336.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

Where the transcript shows that there were two members of the Oil and Gas Board present at all times

during the hearings on the issuance of certain orders, that all members of the board voted in favor of the petition and that transcripts of all the proceedings held by the board were available at all times for any new member or any absent member to read concerning the evidence presented at the hearing, it cannot be said that the board was without jurisdiction to render the orders. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

§ 9-17-5. Oil and Gas Board -- Representation in litigation; administration of oaths.

General shall be attorney for the board; provided, that in cases of emergency the board may call upon the district attorney of the circuit where the action is to be brought or defended to represent the board until such time as the Attorney General may take charge of the litigation. Any member of the board, or the secretary thereof, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by this article or by any other law of this state relating to the conservation of oil and gas. (Acts 1945, No. 1, p. 1, § 7.)

§ 9-17-6. Oil and Gas Board -- Powers and duties generally. [Historical Notes](#) [References](#)

(a) The board shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this article and all other articles relating to the conservation of oil and gas.

(b) The board shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste, over which it has jurisdiction, exists or is imminent. In the exercise of such power the board shall have the authority to perform the following:

- (1) Collect data.
- (2) Make investigation and inspection.
- (3) Examine properties, leases, papers, books and records, including drilling records, logs, and other geological and geophysical data.
- (4) Examine, check, test and gauge oil and gas wells, tanks, plants, processing facilities, structures, natural gas pipelines and gathering lines, and storage and transportation equipment and facilities, and other modes of transportation.
- (5) Hold hearings.
- (6) Appoint a hearing officer for the purpose of conducting public hearings on behalf of the board and making recommendations to the board.
- (7) Require the keeping of records and making of reports.
- (8) Take such action as may be reasonably necessary to enforce this article.

(c) The board shall have the authority to make, after hearing and notice as provided in this article, such reasonable rules, regulations, and orders as may be necessary from time to time in the proper administration and enforcement of this article, including rules, regulations, and orders for the following purposes:

- (1) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or gas out of one stratum to another.
- (2) To prevent the intrusion of water into an oil or gas stratum from a separate stratum.
- (3) To prevent the pollution of fresh water supplies by oil, gas, salt water, or other contaminants resulting from oil and gas operations.
- (4) To require the making of reports showing the location of oil and gas wells and to require the filing of logs, including electrical logs, and drilling records and the lodgment in the office of the State Oil and Gas Supervisor of typical drill cuttings or cores, if cores are taken, within six months from the time of the completion of any well.
- (5) To require reasonable bond, with good and sufficient surety, or other financial security approved by the board, conditioned for the performance of the duties outlined in subdivisions (1), (2), (3), and (4) of this subsection, including the duty to plug each dry or abandoned well and to restore the well site for each dry or abandoned well and associated production and processing facility and plant upon the abandonment of such well, facility, or plant.
- (6) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases or property.
- (7) To prevent the drowning by water of any stratum or part thereof capable of producing oil or

gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces or tends to reduce the total ultimate recovery of oil or gas from any pool.

(8) To require the operation of wells with efficient gas-oil ratios and to fix such ratios.

(9) To prevent "blowouts," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(10) To prevent fires.

(11) To identify the ownership of all oil and gas wells, producing leases, tanks, plants, processing facilities, structures, natural gas pipelines and gathering lines, and storage and transportation equipment and facilities.

(12) To regulate the "shooting," perforating, and chemical treatment of wells.

(13) To regulate enhanced recovery methods, which include Class II injection wells as defined in the Federal Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(14) To regulate the spacing of wells and to establish drilling units.

(15) To limit and prorate the production of oil or gas or both from any pool or field for the prevention of waste as defined in this article.

(16) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil, gas or any product.

(17) To prevent, so far as is practical, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(18) To require the placing of meters of a type approved by the board wherever the board may designate in plants and processing facilities on all pipelines, gathering systems, barge terminals, loading racks, or other places deemed necessary or proper to prevent waste and the transportation of illegally produced oil or gas. Such meters at all times shall be under the supervision and control of the board; and it shall be a violation of this article, subject to the penalties provided in this article, for any person to refuse to attach or install such meter when ordered to do so by the board or in any way to tamper with such meter so as to produce a false or inaccurate reading or to have any bypass at such a place where the oil or gas can be passed around such meter, unless expressly authorized by written permit of the board.

(Acts 1945, No. 1, p. 1, § 9; Acts 1988, No. 88-576, p. 893, § 1; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (b), in the introductory matter inserted "to perform the following", in subdivisions (1) through (6) deleted "to" following the subdivision designator, capitalized the subsequent word and substituted a concluding period for the semicolon, redesignated subdivisions (6) and (7) as subdivisions (7) and (8), respectively, in subdivision (3) inserted ", and other geological and geophysical data", in subsection (4) substituted "plants, processing facilities, structures, natural gas pipelines and gathering lines, and storage and transportation equipment and facilities, and other" for "refineries and", in subdivision (5) added a concluding period and inserted the subdivision (6) designator following "hearings", and in subdivision (6), as so designated, substituted "Appoint" for "to appoint" and deleted the concluding "and"; in subsection (c), in subdivisions (1)-(12) and (14)-(17) substituted a concluding period for the semicolon, in subdivision (3) inserted ", or other contaminants resulting from oil and gas operations", in subdivision (5) inserted "or other financial security approved by the board," and inserted "and to restore the well site for each dry or abandoned well and associated production and processing facility and plant upon the abandonment of such well, facility, or plant", in subdivision (11) substituted "tanks, plants, processing facilities, structures, natural gas pipelines and gathering lines," for "refineries, tanks, plants, structures", in subdivision (13) deleted the concluding semicolon, deleted "and" at the end of subdivision (17), and in subdivision (18) inserted "in plants and processing facilities" and substituted "racks," for "racks, refineries"; and made nonsubstantive changes.


REFERENCES

CROSS REFERENCES

As to authority of Oil and Gas Board to retain faculty members or students of institutions of higher learning for purposes of carrying on or supervising research, etc., see § 9-4-14.

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.12, 92.15.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 336, 338.

§ 9-17-7. Oil and Gas Board -- Rules of procedure for hearings, etc.; promulgation, etc., of rules, regulations or orders generally; promulgation, etc., of emergency rules, regulations or orders.

[References](#) [Annotations](#)

(a) The board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this article.

(b) No rule, regulation or order, including any change, renewal or extension thereof, shall, in the absence of an emergency, be made by the board under the provisions of this article except after a public hearing upon at least 10 days notice, given in the manner and form as may be prescribed by the board. Such public hearing shall be held at such time and place and in such manner as may be prescribed by the board, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the board which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this subsection shall remain in force no longer than 45 days from its effective date and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

(d) Should the board elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the board in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

(e) All rules, regulations and orders made by the board shall be in writing and shall be entered in full by the secretary of the board in a book to be kept for such purpose by the board, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of any rule, regulation or order, certified by the secretary of the board, shall be received in evidence in all courts of this state with the same effect as the original.


(f) Any interested person shall have the right to have the board call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the board by making a request therefor in writing. Upon the receipt of any such request, the board promptly shall call a hearing thereon and, after such hearing and with all convenient speed and in any event within 30 days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate.

(Acts 1945, No. 1, p. 1, § 10; Acts 1965, 2nd Ex. Sess., No. 79, p. 109, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.15.

Corpus Juris Secundum:

C.J.S. Mines and Minerals § 338.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

The due process clause requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. Walker v. Cleary Petroleum Corp., 421 So.2d 85 (Ala.1982).

Notice required is one reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action. Walker v. Cleary Petroleum Corp., 421 So.2d 85 (Ala.1982).

When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. Walker v. Cleary Petroleum Corp., 421 So.2d 85 (Ala.1982).

Cited in State Oil & Gas Bd. v. Seaman Paper Co., 285 Ala. 725, 235 So.2d 860 (1970); Ancora Corp. v. Miller Oil Purchasing Co., 396 So.2d 672 (Ala.1981); Roberts v. State Oil & Gas Bd., 441 So.2d 909 (Ala.Civ.App.1983); State Oil & Gas Bd. v. Anderson, 510 So.2d 250 (Ala.Civ.App.1987).

§ 9-17-8. Oil and Gas Board -- Powers as to witnesses; enforcement of subpoenas issued by board.

References


(a) The board or any member thereof is hereby empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it and to require the production of such books, papers and records in any proceeding before the board as may be material upon questions lawfully before the board. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying or from producing books, papers and records before the board or a court or from obedience to the subpoena of the board or a court on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing contained in this section shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry not pertinent to some question lawfully before such board or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the board or court or in obedience to its subpoena; provided, that no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the board or any member thereof or in case of the refusal of any witness to testify or answer to any matter regarding which he may be lawfully interrogated, any circuit court in this state, on application of the board, may, in term time or vacation, issue an attachment for such person and compel him to comply with such subpoena and to attend before the board and produce such documents and give his testimony upon such matters as may be lawfully required, and such court have the power to punish for contempt as in case of disobedience of like subpoenas issued by or from such court or for a refusal to testify therein. (Acts 1945, No. 1, p. 1, § 11.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.15.

Corpus Juris Secundum:

C.J.S. Mines and Minerals § 338.

§ 9-17-9. State Oil and Gas Supervisor.

Supervisor and shall perform all of the duties of and is hereby vested with all the powers imposed upon and vested in the State Oil and Gas Supervisor under and by the terms and provisions of this article. The State Oil and Gas Supervisor shall be charged with the duty of enforcing this article and all rules, regulations and orders promulgated by the board. The State Oil and Gas Supervisor shall be, ex officio, secretary of the board and shall keep all minutes and records of the board. He shall, as secretary, give bond in such sum as the board may direct with corporate surety to be approved by the board, conditioned that he will well and truly account for any funds coming into his hands. The State Geologist shall receive \$3,600.00 per annum for the performance of his duty under this article.

(Acts 1945, No. 1, p. 1, § 4; Acts 1949, No. 671, p. 1033, § 1; Acts 1969, No. 1033, p. 1916, § 2.)

§ 9-17-10. Employment of personnel. [Historical Notes](#) [References](#)

(a) The Oil and Gas Supervisor, with the concurrence of the board, shall have the authority and it shall be his duty to employ all personnel necessary to carry out the provisions of this article. Such personnel shall be employed under and shall be subject to the provisions of the Merit System Act.

(b) The State Oil and Gas Board is prohibited from discriminating against blacks in its employment practices.

(Acts 1945, No. 1, p. 1, § 5; Act 2002-425, p. 1092, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2002 amendment, effective April 18, 2002, designated subsection (a) and added subsection (b).

REFERENCES

CROSS REFERENCES

As to Merit System, see § 36-26-1 et seq.

§ 9-17-11. Waste prohibited.

(Acts 1945, No. 1, p. 1, § 8.)

§ 9-17-12. Limitations on regulations; drilling or production units; producers' shares.

[Historical Notes](#) [References](#)

(a) Whether or not the total production from a pool is limited or prorated, no rule, regulation, or order of the board shall be such in terms or effect that it will do the following:

(1) That it shall be necessary at any time for the producer from or the owner of, a tract of land in the pool, or an interest associated therewith or derived therefrom, in order that he or she may obtain the tract's just and equitable share or the just and equitable share of the interest of the production of such pool, as the share is set forth in this section, to drill and operate any well or wells on such tract in addition to the well or wells as can without waste produce the share.

(2) As to occasion net drainage from a tract or any interest associated therewith or derived therefrom, unless there is drilled and operated upon the tract a well or wells in addition to such well or wells thereon as can without waste produce the tract's just and equitable share or the just and equitable share of interest, as set forth in this section, of the production of the pool.

(b) For the prevention of waste, to protect and enforce the correlative rights of the owners and producers in a pool and to avoid the augmenting and accumulation of risks arising from the drilling of an

excessive number of wells, the board shall, after a hearing, establish a drilling or production unit or units for each pool. A drilling or production unit, as contemplated in this subsection, means the maximum area which may be efficiently and economically drained by one well, and the unit shall constitute a developed unit as long as a well is located thereon, which is capable of producing oil or gas in paying quantities, or until the board shall determine and order otherwise after notice and hearing. It is provided, however, that the board shall have no authority to fix a drilling or production unit in excess of either 160 acres or one governmental quarter section plus 10 percent tolerance for any pool deemed by the board to be an oil reservoir or in excess of either 640 acres or one governmental section plus 10 percent tolerance, for any pool, deemed by the board to be a gas reservoir, the said 10 percent tolerance provided for so as to allow for irregular sections; provided, however, that the board may, at its discretion, after notice and hearing, establish drilling or production units for oil and gas in excess of the aforesaid limitations when it is affirmatively demonstrated that one well can efficiently and economically drain the proposed area and that a larger unit is justified because of technical, economic, environmental or safety considerations, or other reasons deemed valid by the board. To insure protection of coequal and correlative rights, the board may, after notice and hearing, establish units for oil and gas pools by a quantum not to exceed 50 percent greater than the aforesaid limitation provided such action is justified by sufficient technical data, indicating that the acreage or land in excess of the aforesaid maximum limitations is being drained or is in imminent danger of being drained and that the owners of the excess acreage or lands that the persons owning any interest or combination of interests in the excess acreage or lands cannot otherwise receive their just and equitable share of production from the pool being so drained; provided, however, in the event the excess lands or interests are integrated or pooled by order of the board, then the provisions of Section 9-17-13 shall be applicable to the owners of tracts or interests in the acreage or land in excess of the aforesaid maximum limitations so that the operator of the drilling or production unit in which the tracts or interests are included shall have the right to charge against the interest of each other owner in the production from the wells drilled by the designated operator the actual expenditures required for that purpose, not in excess of what are reasonable, including a reasonable charge for supervision; and the operator shall have the right to receive the first production from the wells drilled thereon which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well so that the amount due by each of them for his or her share of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of production calculated at the market price in the field at the time production is received by the operator or placed to his or her credit.

Notwithstanding the provisions of this section, all persons entitled to share in the production of oil or gas from a tract or interest or tracts or interests in land may voluntarily agree to the creation or establishment of a drilling or production unit, or may authorize one or more of the persons entitled to share in such production to create or establish a drilling or production unit, containing as much or more acreage or land than drilling units established by the board for the same pool, but not in excess of 160 acres or one governmental quarter section, plus 10 percent tolerance, in the case of oil and 640 acres or one governmental section, plus 10 percent tolerance, in the case of gas; subject to the aforementioned qualifications in this section and up to 50 percent greater, as provided hereinabove; a drilling unit so created or established shall, subject to the approval of the board, be valid and binding for all purposes even though the drilling or production unit contains more acreage or land than the board has included, or is authorized by this section to include in a drilling or production unit established by it for the same pool; provided, however, the spacing limitations set forth herein shall not apply to offshore wells and the size and configuration of drilling and production units of offshore wells shall be as is determined proper by the board.

(c) Each well permitted to be drilled upon any drilling or production unit to a pool in a field with respect to which the board has promulgated special rules shall be drilled at a location on the unit authorized by the special rules, and each well permitted to be drilled upon any drilling or production unit where the location thereof is not prescribed by special rules shall be drilled at a location on the unit authorized by rules of statewide application promulgated by the board, with the exceptions as may be reasonably necessary, where it is shown, after notice and hearing, and the board finds, that the unit is partly outside the pool, or, for some other reason, that a well located in accordance with applicable rules would be nonproductive, would not be at the optimum position in the drilling or production unit for the most efficient and economic drainage of the unit, or where topographical conditions are such as to make the drilling at an authorized location on the unit unduly burdensome or where an exception is necessary to prevent the confiscation of property. Whenever an exception is granted, the board shall take such action as will offset

any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste and to the reasonable adjustment because of structural position, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production or whether it be an amount less than that which the pool could produce if no restriction on amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his or her tract or interest or tracts or interests in the pool bear or bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained; and to that end, the rules, regulations, permits, and orders of the board shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counterdrainage), and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy. In determining each producer's just and equitable share of the authorized production for the pool, the board is authorized to give due consideration to the productivity of the well or wells located thereon, as determined by flow tests, bottom hole pressure tests, or any other practical method of testing wells and producing structures, and to consider such other factors and geological or engineering tests and data as may be determined by the supervisor to be pertinent or relevant to ascertaining each producer's just and equitable share of the production and reservoir energy of the field or pool.

(Acts 1945, No. 1, p. 1, § 12; Acts 1956, 2nd Ex. Sess., No. 83, p. 374, § 1; Acts 1979, No. 79-760, p. 1356, § 1; Acts 1990, No. 90-104, p. 114, § 3; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a), in the introductory matter inserted "that it will do the following", in subdivision (1) inserted "or she" and substituted the period at the end for ", or", and in subdivision (2) deleted "such" preceding "interest,"; in subsection (b), in the fourth sentence substituted "50 percent" for "30 percent", deleted "by him" preceding "thereon which otherwise", inserted "or her" in two places, and deleted "such" following "in the field at the time"; in the undesignated subsection substituted "50 percent" for "30 percent"; in subsection (c) inserted "or her"; in subsection (d) inserted "or her" in two places; and substituted "the" for "such", and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.43-92.58.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 262, 362-368, 381, 383.

§ 9-17-13. Integration of interests; cycling operations; orders of board; procedures. [Historical Notes](#)
[References](#) [Annotations](#)

(a) When any mineral or other related interests deriving from two or more separately owned tracts of land are embraced within an established or a proposed drilling or production unit, or when there are separately owned interests in all or a part of an established or proposed drilling or production unit, or any

combination of such, the persons owning the interests therein may validly agree to integrate or pool the interests and to develop the interests and associated lands as a drilling or production unit. Where, however, the owners have not agreed to so integrate or pool the interests, the board shall, for the prevention of waste or to avoid the drilling of unnecessary wells, require the persons owning such interests to do so and to develop their interests and the associated lands as a drilling or production unit.

(b) The board, in order to prevent waste and avoid the drilling of unnecessary wells, may permit or require the cycling of gas in any pool or portion thereof and is also authorized to permit or require the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring the reservoir, maintaining pressure or carrying on enhanced recovery operations. The board may require pooling or integration of all the interests in or associated with the tracts, when reasonably necessary in connection with cycling operations.

(c) All orders requiring integration, pooling, cycling, repressuring, pressure maintenance or enhanced recovery operations shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable and which will afford to the person owning each such interest associated with each tract the opportunity to recover or receive his or her just and equitable share of the oil and gas in the pool without unnecessary expense and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage. The portion of the production allocated to each tract or interest included in an integrated or pooled unit formed by an integration or pooling order shall, when produced, be considered as if it had been produced from the tract or interest by a well drilled thereon; and any operations conducted within or with respect to the pooled or integrated unit pursuant to the pooling or integration order shall be deemed for all purposes to be the conduct of operations for the production of oil or gas or both from each tract or interest within the unit. All orders requiring pooling or integration shall, among other things, provide all of the following:

(1) That the actual and reasonable costs of developing and operating the pooled integrated unit (including a reasonable charge for supervision) and, if applicable, a risk compensation fee (as hereinafter provided) shall be charged to the separately owned tracts or interests in the unit in the same proportion that such tracts or interests share in production from the unit.

(2) That such costs and fee (if any) chargeable to a tract or interest shall be paid by the person or persons not entitled to share in production free of development and operating costs and who, in the absence of the pooling or integration order, would be responsible for the expense of developing and operating the tract or interest and that person's or persons' interest in the separately owned tract or interest shall be primarily responsible therefor.

(3) That, if any nonconsenting owner shall fail or refuse to pay the costs and/or fee (if any) chargeable to his or her tract or interest, the costs and/or fee shall be recoverable solely out of the production allocable to the tract or interest, provided, however, that this limitation shall not apply to a nonconsenting owner who has furnished the operator with a notarized statement agreeing to pay his or her proportionate share of the drilling and completion costs for a unit well as hereinafter provided.

(4) That, when the full amount of any charge made against a separately owned tract or interest is not paid when due by the person or persons primarily responsible therefor, as provided above, then 13/16ths (or if said tract or interest is leased, the working interest fraction or percent if it is greater) of the oil and gas production allocated to the separately owned tract or interest may be appropriated by the operator and marketed and sold for the payment of the charge, but that a 3/16ths part (or the actual landowner royalty if it is less) of the unit production allocated to each separately owned tract or interest shall in all events be regarded as royalty and shall, if there be no reasonable question as to good and merchantable title, be distributed to and among, or the proceeds thereof paid to, the person or persons owning royalty or unleased mineral interests (as the case may be) in the tract or interest free and clear of the development and operating costs and of any risk compensation fee and free and clear of any lien for the payment of the costs and fee.

(5) That any person owning any overriding royalty, oil and gas payment, royalty in excess of 3/16ths of production, or other interests, who is not primarily responsible for payment of the development and operating costs or risk compensation fee (if any), shall, to the extent of any payment or deduction therefor from his or her share, be subrogated to all the rights of the operator with respect to the interest or interests primarily responsible for the payment.

Additionally, if the operator, or the operator together with the consenting owners, shall own a majority in interest of the drilling and operating rights in the integrated or pooled unit, and the operator has made a good faith effort to (i) negotiate with each nonconsenting owner to have the owner's interest voluntarily

integrated or pooled into the unit, (ii) notify each nonconsenting owner of record of the names of all owners of drilling rights who have agreed to integrate or pool any interests in the unit, (iii) ascertain the address of each nonconsenting owner, (iv) give each nonconsenting owner written notice of the proposed operation, specifying the work to be performed, the proposed location, proposed depth, objective formation and the estimated cost of the proposed operation, and (v) to offer each nonconsenting owner the opportunity to lease or farm out on reasonable terms or participate in the cost and risk of developing and operating the unit well involved on reasonable terms, then the pooling or integration order shall, if the operator so requests, also provide that, if any nonconsenting owner (a) does not pay his or her proportionate share of the drilling and completion costs for any unit well within 30 days after commencement of actual drilling operations, or prior to reaching total depth, whichever is earlier, or at such other time as may be contracted between the parties, or, alternatively, (b) does not, on or before commencement of actual drilling operations, provide the operator with a notarized statement agreeing to pay the costs, then there shall be charged to the tract or interest of the nonconsenting owner a risk compensation fee equal to 150 percent of the tract's or interest's share of the actual and reasonable costs of drilling, reworking (prior to initial commercial production), testing, plugging back, deepening (but not below that depth specified in the permit for the well), and completing (through the wellhead) said well; provided, however, that no risk compensation fee shall be chargeable against the tract or interest of any nonconsenting owner who owned of record a tract or interest in the unit prior to the time notice was given unless, at the pooling or integration hearing, it is shown, by a United States mail certified mail return receipt card or by other evidence deemed sufficient by the board, that the nonconsenting owner was given actual notice of the pooling or integration hearing and unless it is also shown that the notice given to the owner specifically stated that the operator was requesting that the board impose a risk compensation fee in accordance with the provisions of this section. In the event that a nonconsenting owner who has provided the operator with a notarized statement agreeing to pay his or her proportionate share of the drilling and completion costs for a unit well does not fully pay the costs within 30 days after commencement of actual drilling operations or prior to reaching total depth, whichever is earlier, or on or before such other time as may be contracted between the parties, then any unpaid balance of the costs shall bear interest at the rate of one and one-half percent per month, and the nonconsenting owner shall be personally liable for the unpaid balance together with interest thereon and also for any attorney's fees, court costs, or other expenses incurred by the operator in attempting to collect the unpaid balance and interest thereon; and, additionally, the operator shall have the right, if the well is a producer, to appropriate, market, and sell the nonconsenting owner's share of production for the payment of the amounts due by that owner. The value of any production appropriated by the operator under the authority of any integration or pooling order shall be calculated at the market price in the field (after deduction for taxes and for cleansing, transportation, compression, and processing costs) at the time such production is received by the operator or placed to his or her credit. Unless the pooling or integration order (or an amendment thereto) shall specify otherwise or unless the affected parties shall agree otherwise, production from any pooled or integrated unit formed by a pooling or integration order shall be allocated to each separately owned tract or interest in the unit in the proportion that the acreage of each tract or interest bears to the total acreage of the unit; and under the circumstances allocation of production on this basis shall be considered as a just and reasonable allocation which will afford to each person owning each tract or interest within the unit the opportunity to recover or receive his or her just and equitable share of the oil and gas produced from the unit. Nothing herein or in any order issued pursuant hereto shall be construed to subject any nonconsenting owner who is subject to a risk compensation fee, as hereinabove provided, to any personal liability for any damages caused by or resulting from any negligent act or other tort committed by the operator or by any consenting owner in the course of developing and operating a pooled or integrated unit; nor shall anything herein or in any order issued pursuant hereto prevent the operator and any other owner or owners in the unit from entering into any agreement that contains provisions respecting the pooling, integration, or development of their tracts or interests in the pooled or integrated unit that differ from the above provisions or from the provisions contained in any pooling or integration order. As used herein, the term "operator" shall mean the person designated by the board to be in charge of developing and operating a drilling or production unit; the term "nonconsenting owner" shall mean an owner who owns a tract or interest in a drilling or production unit and who has not, on or before the date a pooling or integration order is entered with respect to such unit, reached an agreement with the operator relative to the terms and conditions which will govern the manner in which his or her said tract or interest shall be developed and operated; the term "consenting owner" shall mean an owner who has so reached such an agreement with the operator; the term "owner" shall mean a person who, if a pooling or integration order had not been

entered, would be an owner as that term is defined elsewhere in this article; the terms "costs of developing" and "development costs" shall include, among other things, the costs of drilling, equipping, reworking, testing, plugging back, deepening, and completing the initial unit well and any subsequent unit well but shall not include any costs incurred in connection with the acquisition of any oil and gas leases covering tracts or interests in the unit; and the term "actual and reasonable costs" means actual expenditures not in excess of what are reasonable.

Subsection (c) shall apply only to unitization of interests within a drilling unit and shall not apply to fieldwide or poolwide units, which are authorized and governed under the provisions of Article 3 of this chapter.

(d) Should the owners of separate tracts or interests embraced within a drilling or production unit fail to agree upon the integration or pooling of the tracts or interests associated with the tracts and the drilling of a well on that unit, and should it be established that the board is without authority to require integration or pooling as provided for in this section, then subject to all other applicable provisions of this article, the owner of the interest or interests associated with each tract embraced within the drilling or production unit may drill on his or her tract; but the allowable production from that tract or interest shall be such proportion of the allowable production for the full drilling or production unit as the area of the separately owned tract associated with the separately owned interest bears to the full drilling or production unit.

(e) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate interests in the same oil or gas pool, or in any area that appears from geological or other data to be underlain by a common accumulation of oil or gas, or both, and agreements between and among the owners or operators, or both, and royalty owners therein of the pool or area or any part thereof as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

(Acts 1945, No. 1, p. 1, § 13; Acts 1979, No. 79-621, p. 1101, § 1; Acts 1989, No. 89-916, p. 1810, § 1; Acts 1990, No. 90-104, p. 114, § 3; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (b) substituted "enhanced" for "secondary" preceding "recovery operations"; in subsection (c) substituted "enhanced" for "secondary" preceding "recovery operations", inserted "or her", substituted "the unit" for "such unit" and added "all of the following", in subdivision (2) deleted "such" preceding "person's or", in subdivision (3) inserted "or her" in two places, and in subdivision (5) inserted "or her"; in the first undesignated subsection substituted "the" for "said" in two places, and inserted "or her" in five places; in subdivision (d) inserted "or her", and substituted "that tract" for "such tract"; and substituted "the" for "such" throughout, and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  92.23.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 349, 355.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Pooling 2 enter p
Surface use 3 enter p

1. Generally

Subsection (a) of this section establishes the procedures by which a drilling or production unit may be formed. *Michigan Oil Co. v. Black*, 455 So.2d 824 (Ala.1984).

2. Pooling

This section does not allow pooling of leases with less than unanimous agreement of the parties unless a force-pooling order is obtained from the Oil and Gas Board. *Michigan Oil Co. v. Black*, 455 So.2d 824 (Ala.1984).

Compulsory or forced pooling does affect prior royalty agreements. *Pacific Enterprises Oil Co. (USA) v. Howell Petroleum Corp.*, 614 So.2d 409 (Ala.1993). Mines And Minerals ☒ 79.1(5); Mines And Minerals ☒ 92.79

3. Surface use

The lessee of oil rights had right to use the surface in such a manner as was reasonably necessary to recover the oil where the well was located and constructed pursuant to a pooling order under this section; the owner of the surface who acquired title subject to the lessee's oil rights could not complain about lessee's partial use of the surface. *Gulf Oil Corp. v. Deese*, 275 Ala. 178, 153 So.2d 614 (Ala.1963).

§ 9-17-14. Limitations upon rules, regulations or orders establishing limits on production allowable within state or from separate pools; production of more than established allowable production or production in unauthorized manner. [References](#)

(a) Whenever the board limits the total amount of oil or gas which may be produced in this state, the limit so fixed shall not be less than the aggregate of the allowables fixed for each separate pool in this state for the prevention of waste in accordance with the foregoing definition of waste, plus the production from unrestricted pools, and it shall allocate or distribute the allowable so fixed among the separate pools. Such allocation or distribution among the pools of the state shall be made on a reasonable basis, giving to each pool with small wells of settled production an allowable production which will not accelerate or encourage a general premature abandonment of the wells in the pool.

(b) Whenever the board limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed (which limitation may be imposed either incidentally to or without a limitation of the total amount of oil or gas which may be produced in the state), the board shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage and so that each producer will have the opportunity to produce or receive his just and equitable share, as set forth in this article, subject to the reasonable requirements for the prevention of waste.

(c) After the effective date of any rule, regulation or order of the board fixing the allowable production of oil or gas or both for any pool, no person shall produce from any well, lease or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

(Acts 1945, No. 1, p. 1, § 14.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals ☒ 92.23.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 349, 355.

§ 9-17-15. Judicial review of rules, regulations or orders. [References](#) [Annotations](#)

Any interested person aggrieved by any rule, regulation or order made or promulgated by the board under this article and who may be dissatisfied therewith shall, within 30 days from the date said order, rule or regulation was promulgated, have the right, regardless of the amount involved, to institute a civil action by filing a complaint in the circuit court of the county in which all or part of the aggrieved person's property affected by any such rule, regulation or order is situated to test the validity of said rule, regulation or order promulgated by the board. Such civil action shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted except for reasons deemed imperative by the court. In such trials the validity of any rule, regulation or order made or promulgated under this article shall be deemed prima facie valid, and the court shall be limited in its consideration to a review of the record of the proceedings before the board, and no new or additional evidence shall be received.

The reviewing court shall limit its consideration to the following:

- (1) Whether the rule, regulation or order is constitutional;
- (2) Whether the rule, regulation or order was without or in excess of jurisdiction;
- (3) Whether the rule, regulation or order was procured by fraud;
- (4) Whether the rule, regulation or order is reasonable; and
- (5) Whether the rule, regulation or order is unsupported by the evidence.

(Acts 1945, No. 1, p. 1, § 15; Acts 1957, No. 575, p. 798, § 1; Acts 1965, 2nd Ex. Sess., No. 81, p. 111, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals ☒ 92.34.

Corpus Juris Secundum:

C.J.S. Mines and Minerals § 356.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Authority of court 2 enter p
Particular circumstances 3 enter p

1. Generally

The judicial review provided by this section is specifically limited to a consideration of the proceedings and evidence before the board and is not a trial de novo. *Mize v. Exxon Corp.*, 1981, 640 F.2d 637.

Board's orders are presumed to be prima facie correct and, if the reviewing court determines that evidence was offered which supports the order, then the court must affirm. *State Oil and Gas Bd. of Alabama v. Anderson*, 510 So.2d 250 (Ala.Civ.App.1987), certiorari denied 108 S.Ct. 348, 484 U.S. 955, 98 L.Ed.2d 374.

2. Authority of court

It is the function of the trial court to determine whether there is evidence which supports the board's ruling. It is not the function of appellate courts to substitute their judgment for findings of fact made by an administrative authority. *Roberts v. State Oil and Gas Bd. of State of Ala.*, 441 So.2d 909 (Ala.Civ.App.1983). Administrative Law And Procedure ☒ 784.1

The conclusions of a trial (i.e., circuit) court that State Oil and Gas Board orders did not fulfill and satisfy all of the terms and provisions of a unitization agreement relating to the enlargement of a unit area and that said orders were not in accordance with the law are not among the grounds which the trial (i.e., circuit) court is authorized to consider when reviewing a rule. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970). Mines And Minerals ☒ 92.79

3. Particular circumstances

Owners of parcels of land outside a secondary recovery unit engaged in an improper collateral attack on the order of the State Oil and Gas Board creating the unit, by bringing an action against a petroleum company stemming from the company's alleged drainage of the owners' lands by the company's oil and gas recovery operations on the unit; the Board had expressly found that the unit was being created to prevent waste and to protect the rights of all the owners of interests in the unitized area, and the owners had failed to petition for another hearing to add their parcels to the unit. *Phillips Petroleum Co. v. Stryker*, 723 So.2d 585 (Ala.1998), rehearing denied. Mines And Minerals ☒ 92.79

Cited in *Sheffield v. Exxon Corp.*, 424 So.2d 1297 (Ala.1982); *Jones v. Bronco Oil & Gas Co.*, 446 So.2d 611 (Ala.1984).

§ 9-17-16. Injunctions -- Issuance against board, etc. [References](#)

(a) No temporary restraining order or injunction of any kind shall be granted against the board or the members thereof or against the Attorney General or any district attorney or against any agent, employee or representative of the board restraining the board or any of its members or any of its agents, employees or representatives or the Attorney General or any district attorney, from enforcing any of the provisions of this article or any rule, regulation or order made under this article, except after due notice to the members of the board and to all other defendants and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law and, if enforced against the complaining party, will cause an irreparable injury. The judgment or order of the court granting temporary injunctive relief shall state the nature and extent of the probable invalidity of any provision of this article or of any rule, regulation or order made under this article involved in such suit and shall also contain a clear statement of the probable damage relied upon by the court as justifying the temporary relief.

(b) No temporary injunctive relief of any kind, including a temporary restraining order, against the board or the members thereof or its agents, employees or representatives or the Attorney General or any district attorney shall become effective until the plaintiff shall execute a bond to the state with sufficient surety in an amount to be fixed by the court, reasonably sufficient to indemnify all persons who may suffer damage by reason of the violation pendente lite by the complaining party of the provisions of this article or of any rule, regulation or order complained of. Such bond shall be approved by the judge of the court in which the civil action is pending, and the court may, from time to time on motion and with notice to the parties, increase or decrease the amount of the bond and may require new or additional sureties as the facts may warrant. Such bond shall be for the use and benefit of all persons who may suffer damage by reason of the violation pendente lite of this article or of any provision, rule, regulation or order complained of in such civil action, and any person so suffering damage may bring a civil action on such bond before the expiration of six months after any provision of this article or of any rule, regulation or order complained of shall be finally held to be valid in whole or in part or such civil action against the board or the members thereof shall be finally disposed of.
(Acts 1945, No. 1, p. 1, § 16.)

REFERENCES

CROSS REFERENCES

For provisions of Alabama Rules of Civil Procedure relative to injunctions, see A.R.C.P., Rule 65.

§ 9-17-17. Injunctions -- Issuance against persons violating, etc., provisions of article, rules, etc.

Whenever it shall appear that any person is violating or threatening to violate any provision of this article or any rule, regulation or order made under this article and unless the board without litigation can effectively prevent further violation or threat of violation, then the board, through the Attorney General, who may call to his assistance the district attorney of the circuit in which civil action is instituted, shall bring in the name of the State of Alabama against such person in the circuit court in the county of the residence of the defendant or, if there is more than one defendant, in the circuit court of the county of the residence of any of them or in the circuit court of the county in which such violation is alleged to have occurred, a civil action to restrain such person from continuing such violation or from carrying out the threat of violation. In such civil action the board, in the name of the State of Alabama, may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

(Acts 1945, No. 1, p. 1, § 17.)

§ 9-17-18. Injunctions -- Appeals.

enforcement of this article or of any rule, regulation or order issued under this article, as provided in Section 9-17-17 or in any civil action where an interested party seeks to test the validity of or enjoin the enforcement of this article or any rule, regulation or order issued under this article as provided in Section 9-17-16, either party shall have the right of an immediate appeal to the Supreme Court from any judgment or order therein granting or refusing an injunction, whether temporary restraining order, preliminary injunction or permanent injunction, or other character of injunctive relief, or from any order granting or overruling a motion to dissolve such injunction. The manner of presenting any appeal as provided for in this section shall be governed by the provisions of the rules and laws of the State of Alabama regulating appeals in injunction proceedings.

(Acts 1945, No. 1, p. 1, § 18.)

§ 9-17-19. Civil actions for damages for violations of provisions of article, rules, etc.; actions by private parties to enjoin violations of provisions of article, rules, etc.

authorized in this article and no civil action by or against the board and no penalties imposed or claimed against any person for violating any provision of this article or any rule, regulation or order issued under this article and no forfeiture shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this article or any rule, regulation or order issued under this article. Any person so damaged by the violation may institute a civil action for and recover such damages as he may show that he is entitled to receive.

(b) In the event the board should fail to bring a civil action to enjoin any actual or threatened violation of any provision of this article or of any rule, regulation or order made under this article, then any person or party in interest adversely affected by such violation or threat thereof and who has requested the board to institute a civil action in the name of the state may, to prevent any or further violation, bring a civil action for that purpose in any court in which the board could have brought a civil action. If, in such civil action, the court holds that injunctive relief should be granted, then the state shall be made a party and shall be substituted by order of the court for the person who brought the action, and the injunction shall be issued as if the state had at all times been the complaining party.

(Acts 1945, No. 1, p. 1, § 19.)

§ 9-17-20. False swearing, false entries or statements in reports, etc. Repealed by Acts 1977, No. 607,

p. 812, § 9901, as amended, effective January 1, 1980. § 9-17-21. Illegal oil, gas or product -- Sale, acquisition, processing, handling, etc.

processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited.

(b) Unless and until the board provides for certificates of clearance or tenders or some other method so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition or of transportation, refining, processing or handling in any other way involves illegal oil, illegal gas or illegal product, no penalty shall be imposed for the sale, purchase or acquisition or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances stated in this section.

Penalties shall be imposed by the board for each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this article shall apply to any sale, purchase or acquisition and to the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire or to transport, refine, process or handle in any other way any oil, gas or any product without complying with any rule, regulation or order of the board relating thereto.

(Acts 1945, No. 1, p. 1, § 22.)

§ 9-17-22. Illegal oil, gas or product -- Seizure, condemnation and sale.

any other remedy or procedure which may be available to the board or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas or illegal product, all illegal oil, illegal gas and illegal products shall, except under such circumstances as are stated in this section, be contraband, forfeited to the State of Alabama and shall be seized and sold and the proceeds applied as provided in this section. When any such seizure shall have been made, it shall be the duty of the Attorney General of the state to institute at once condemnation proceedings in the circuit court of the county in which such property is seized by filing a complaint in the name of the state against the property seized, describing the same, or against the person or persons in possession of such illegal property, if known, to obtain a judgment enforcing the forfeiture. Any party claiming a superior right may intervene in said action by filing a complaint and have his claim adjudicated. The judge presiding in said circuit court may superintend and make all proper orders as to the method and manner of notice to be given to any party claiming any right in the property so seized to come in and assert his right thereto. The said court shall have authority to frame all orders of procedure so as to regulate the proceedings whereby persons may have an opportunity to come in and propound their claim to the seized property sought to be condemned.

The proceeds of the sale of any such property forfeited to the state shall, after paying all expenses of seizing, holding and selling such property, including the costs of court, be paid into the Oil and Gas Fund. The property sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, rules, regulations and orders with respect to further sale or purchase or acquisition and with respect to the transportation, refining, processing or handling in any other way of the commodity purchased. Nothing in this section shall deny or abridge any cause of action which a royalty owner or a lien holder or any other claimant may have because of the forfeiture of the illegal oil, illegal gas or illegal product against the person whose act resulted in such forfeiture.

(Acts 1945, No. 1, p. 1, § 23.)

§ 9-17-23. Owners not to allow wells to get out of control, etc.; rights of board upon failure of owners to control wells; powers, etc., of board to secure payment by owners of costs and expenses of controlling or plugging wells.

is hereby declared to be unlawful for any owner to allow a well to go wild or to get out of control. The owner of any such well shall, after 24 hours written notice by the board given to him or to the person in possession of such well, make reasonable effort to control such well. In the event of the failure of the

owner of such well within 24 hours after service of the notice above provided for to control the same, if such can be done within the period, or to begin in good faith, upon service of such notice, operations to control such well or upon failure to prosecute diligently such operations, then the board shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well, all at the reasonable expense of the owner of the well. In order to secure to the board in the payment the reasonable cost and expense of controlling or plugging such well, the board shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and incomes therefrom until the costs and expenses incurred by the board shall be repaid. When all such costs and expenses have been repaid, the board shall restore possession of such well to the owner; provided, that in the event the income received by the board shall not be sufficient to reimburse the board as provided for in this section, the board shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the board shall proceed to enforce such lien or privilege by a civil action brought in any court of competent jurisdiction, the same as any other like civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the board which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well.
(Acts 1945, No. 1, p. 1, § 24.)

§ 9-17-24. Notification prior to drilling wells; hearing; fees; Alabama Oil and Gas Board Special Fund. [Historical Notes](#) [References](#)

(a) Any person desiring or proposing to drill any well in search of oil or gas or any person proposing to drill a Class II injection well as defined in the Federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., before commencing the drilling of any such well, shall notify the State Oil and Gas Supervisor upon the form as the State Oil and Gas Supervisor may prescribe and shall pay to the State Treasurer a fee of three hundred dollars (\$300) for each well. The drilling of any well is hereby prohibited until notice is given and the fee has been paid as herein provided. The State Oil and Gas Supervisor shall have the power and authority to prescribe that the form indicate the exact location of the well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well above sea level and such other relevant information as the State Oil and Gas Supervisor may deem necessary or convenient to effectuate the purposes of this article.

(b) Any person filing a petition or notice of such petition with the State Oil and Gas Board requesting a public hearing before the State Oil and Gas Board shall pay to the State Treasurer a fee of one hundred fifty dollars (\$150) for filing the petition. Any person who desires to file a petition with the board in forma pauperis shall file with the board a motion for leave so to proceed together with an affidavit, showing his or her inability to pay the filing fee therefor and his or her belief that he or she is entitled to redress before the board. If the motion is granted, the person may proceed without payment of the filing fee. If the motion is denied, the board shall state in writing the reasons for the denial.

(c) Any person proposing to fracture a coal group shall notify the State Oil and Gas Supervisor. The notification shall be in a form prescribed by the State Oil and Gas Supervisor and shall be accompanied by a fee paid to the State Treasurer not to exceed two hundred fifty dollars (\$250) for each coal group to be fractured. All fees for a proposal to fracture a coal group paid pursuant to this section shall be deposited into the State Oil and Gas Board Special Fund and disbursed by the State Treasurer upon warrants drawn by the state Comptroller for the purpose of defraying the expenses incurred by the State Oil and Gas Board in the performance of its duties pursuant to this subsection.

(d) All well permit fees, filing fees for petitions, and other fees paid to the State Treasurer pursuant to this section shall be paid into the Alabama State Oil and Gas Board Special Fund and disbursed by the State Treasurer upon warrants drawn by the state Comptroller for the purpose of defraying expenses incurred by the State Oil and Gas Board in the performance of its duties.

(e) There is hereby created a separate fund in the State Treasury to be known as the Alabama State Oil and Gas Board Special Fund. This fund shall consist of well permit fees, filing fees for petitions, and other fees. All moneys deposited in this fund shall be used for the purpose of defraying expenses incurred by the State Oil and Gas Board in the performance of its duties. The fund shall be paid out only by warrant of the

Comptroller upon the Treasurer, upon itemized vouchers, approved by the State Oil and Gas Supervisor; provided, that no funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12, and only in amounts as stipulated in the general appropriation or other appropriation bills, provided further, that any funds unspent and unencumbered at the end of any state fiscal year shall not be transferred into the General Fund.

(Acts 1945, No. 1, p. 1, § 25; Acts 1975, No. 1094, p. 2163, § 1; Acts 1979, No. 79-425, p. 666, §§ 1, 2; Acts 1988, No. 88-576, p. 893, § 1; Act 2000-714, p. 1517, § 1; Act 2002-425, p. 1092, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a) substituted "the form as" for "such form as", substituted "three hundred dollars (\$300)" for "\$300.00", substituted "each well" for "each such well", substituted "until notice" for "until such notice", substituted "the fee has" for "such fee has", substituted "the form" for "the said form" preceding "indicate", and substituted "the well" for "such well" following "exact location of"; in subsection (b) substituted "one hundred fifty dollars (\$150)" for "\$150.00", substituted "the petition" for "such petition", and inserted "or her" in three places; deleted subsection (c); redesignated subsections (d) and (e) as subsections (c) and (d), respectively; and in subsections (c) and (d), as so redesignated, deleted "application fees for NGPA determinations" preceding "and other fees".

The 2002 amendment, effective April 18, 2002, added subsection (c), redesignated subsections (c) and (d) as subsections (d) and (e), respectively; and in subsection (e), as so redesignated, substituted "The" for "Such".

Code Commissioner's Notes

Section 2 of Act 2002-425, which amended this section, states: "This act is remedial and curative and shall be retroactive to September 1, 2001, as to any fee collected in accordance with this amendatory act after September 1, 2001."

REFERENCES

ADMINISTRATIVE CODE

17 Ala. Admin. Code 400-3-8-.03, State Oil and Gas Board; Governing Submerged Offshore Land Operations; Safety and Environment: Protection of Underground Sources of Drinking Water During the Hydraulic Fracturing of Coal Beds.

§ 9-17-25. Tax for expenses of administration and enforcement of article -- Levied; exemptions; payment. [Historical Notes](#) [References](#) [Annotations](#)

(a) For the purpose of defraying the expenses connected with the administration and enforcement of this article, including the expense of the inspections, tests, analyses and all other expenses connected with the supervision and protection of crude petroleum oil and natural gas in the State of Alabama, there is hereby levied on the producer a tax equal in amount to two percent of the gross value, at the point of production, of the crude petroleum oil or natural gas produced for sale, transport, storage, profit or for use from any well or wells in the State of Alabama. Provided, however, that natural gas lawfully injected into oil or gas pools or reservoirs in the soil or beneath the soil or waters of the State of Alabama is exempt from this tax. Provided, further, that natural gas lawfully injected into the earth for the purpose of lifting oil or gas in the State of Alabama is exempt from this tax. However, if any gas so injected into the earth is sold for such purposes or injected into underground storage facilities as defined in Section 9-17-150 et seq., then the gas so sold or injected shall not be exempt from this tax. Natural gas lawfully vented or flared in connection with the production, treatment, or processing of oil or gas is exempt from the tax. The tax shall

be paid to the Department of Revenue directly by the purchaser when authorized in writing by the producer, and, when so paid, the producer or person in charge of production shall be relieved of any further liability.

(b) For any well for which the initial permit issued by the Oil and Gas Board is dated on or after July 1, 1996, and before July 1, 2002, except a replacement well for a well for which the initial permit was issued by the Oil and Gas Board is dated before July 1, 1996, the applicable rate of tax levied pursuant to subsection (a) shall be one percent for a period of five years commencing with commercial production, after which subsection (a) shall apply.

(Acts 1945, No. 1, p. 1, § 26; Acts 1953, No. 453, p. 558; Acts 1984, No. 84-661, p. 1325, § 1; Acts 1994, No. 94-367, p. 615, § 1; Acts 1996, 2nd Ex. Sess., No. 96-877, p. 1688, § 1; Act 99-584, p. 1332, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1994 amendment, effective June 1, 1994, deleted the provision at the end of the first sentence which provided for the exemption of natural gas lawfully injected into the earth for certain purposes and added the second, third, fourth, and fifth sentences.

The 1996 amendment, effective July 30, 1996, designated the existing provisions as subsection (a), and added subsection (b).

The 1999 amendment, effective September 1, 1999, in subsection (b) substituted "2002" for "1999".

REFERENCES

CROSS REFERENCES

As to special definition of "producer" for purposes of this section, see § 9-17-1.

As to tax generally on production or severance of oil or gas, see § 40-20-2.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

So long as the Revenue Department considers like-quality gas sales prices by reasonably regarding them, the Revenue Department is not constrained to determine value on the basis of like-quality sales prices and may conclude that gas should be valued by the work-back method. *State v. Phillips Petroleum Co.*, 638 So.2d 893 (Ala.1994).

§ 9-17-26. Tax for expenses of administration and enforcement of article -- Records, returns and remittances of producers; determination of gross value at point of production; rules and regulations.

petroleum or natural gas from any well or wells in the State of Alabama for sale, transport, storage, profit or for use to keep and preserve such records of the amount of all such crude petroleum oil or natural gas produced for sale, transport, storage, profit or for use as may be necessary to determine the amount of the tax for which he is liable under the provisions of Section 9-17-25.

(b) It shall be the further duty of every such person to file with the Department of Revenue, not later than the fifteenth day of the second calendar month following the month of production, a return, subscribed by the person who completes such return, which must contain a printed declaration that it is made under the penalty of perjury, showing the amount of crude petroleum oil or natural gas produced for sale, transport,

storage, profit or for use during the second preceding month, to compute on the return the amount of tax charged against him in accordance with the provisions of Section 9-17-25 and to transmit to the Department of Revenue with such return a remittance covering the tax chargeable against him. The return shall contain such other information and shall be in such form as the Department of Revenue shall designate.

(c) The Department of Revenue is authorized to determine the gross value at the point of production in accordance with customary practice.

(d) The Department of Revenue is hereby authorized to promulgate reasonable rules and regulations relating to the administration and enforcement of this article provided, however, that no rule or regulation adopted or promulgated by the department shall alter, limit, extend or be out of harmony with any of the provisions of this article.

(Acts 1945, No. 1, p. 1, § 27; Acts 1981, No. 81-703, p. 1180, § 1; Acts 1991, 1st Ex. Sess., No. 91-798, p. 193, § 3.)

§ 9-17-27. Tax for expenses of administration and enforcement of article -- Recovery of tax improperly collected. [Historical Notes](#)

In the event that any collection of tax is improperly made in an effort to enforce the provisions of Section 9-17-25, either as a result of a mistake of law or fact, the amount so paid may be recovered in the same manner as is provided by law for the recovery of other taxes erroneously paid directly to the Department of Revenue.

(Acts 1945, No. 1, p. 1, § 28.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1998 amendment, in subsection (a) substituted "requirements. In" for "requirements; provided, that in"; in subdivision (b), in subdivision (1) substituted "manner. Nothing" for "manner; provided, that nothing", in subdivision (9) inserted "doing each of the following activities" and in paragraph a inserted ", the following" and deleted "and" at the end of subparagraph 3, in subdivision (10) substituted "operations. The" for "operations; provided, that the" and deleted "such" following "shall make", and substituted concluding periods for semicolons throughout the subsection; and added subsection (e). For effective date, see the Code Commissioner's note below.

§ 9-17-28. Tax for expenses of administration and enforcement of article -- Penalty and interest for failure to pay tax. Repealed by Acts 1992, No. 92-186, p. 349, § 80, effective October 1, 1992. § 9-17-29. Tax for expenses of administration and enforcement of article -- Notice to make return; penalty and interest for failure to make return and pay tax. Repealed by Acts 1992, No. 92-186, p. 349, § 80, effective October 1, 1992. § 9-17-30. Tax for expenses of administration and enforcement of article -- Lien for payment of tax, interest and penalties. Repealed by Acts 1992, No. 92-186, p. 349, § 80, effective October 1, 1992. § 9-17-31. Tax for expenses of administration and enforcement of article -- Disposition and expenditure.

crude petroleum oil or natural gas produced for sale, transport, storage, profit or for use, from any well or wells in the State of Alabama, as is provided in Section 9-17-25, shall be deposited in the State Treasury to the credit of the General Fund and shall be expended only in the manner provided by appropriation by the Legislature.

(Acts 1961, Ex. Sess., No. 95, p. 2008, § 1.)

§ 9-17-32. Penalty for violations of provisions of article, rules, etc.; penalty applicable to each prohibited transaction relating to illegal oil, gas or product; penalty for aiding or abetting violations of provisions of article, rules, etc.; payment of fine not to abridge private causes of action for damages for violations of rules, etc.

of this article, or any rule, regulation or order of the board made under this article shall, in the event a penalty for such violation is not otherwise provided for in this article, be subject to a fine not to exceed \$10,000.00 a day for each and every day of such violation and for each and every act of violation, such fine to be recovered by a civil action in the circuit court of the county where the defendant resides, or in the county of the residence of any defendant if there is more than one defendant, or in the circuit court of the county where the violation took place. The place of the civil action shall be selected by the board, and such civil action, by direction of the board, shall be instituted and conducted in the name of the board by the attorney for the board or by the Attorney General or under his direction by the district attorney for the county where the civil action is instituted.

(b) The payment of any fine as provided for in this section shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas or illegal product into legal product; nor shall such payment have the effect of authorizing the sale, purchase or acquisition or the transportation, refining, processing or handling in any other way of such illegal oil, illegal gas or illegal product, but, to the contrary, the fine shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas or the violation of any provision of this article or any rule, regulation or order made under this article shall be subject to the same penalty prescribed in subsection (a) of this section for the violation by such other person.

(d) The payment of any fine shall not impair or abridge any cause of action which any person may have against the person violating a rule, regulation or order by reason of an injury resulting from such violation.

(Acts 1945, No. 1, p. 1, § 21; Acts 1990, No. 90-104, p. 104, § 3.)

§ 9-17-33. Disposition of proceeds from sale of oil or gas production. [Historical Notes](#)

(a) As used in this section, the following terms shall have the following meanings:

(1) Check stub. The financial record attached to a check, included with a check, or mailed separately at or near the time the check is mailed.

(2) Division order. A contract between the interest owner and the purchaser, operator, or the owner of the right to drill and to produce, directing the distribution of the value from the sale of the oil, gas, and other liquid hydrocarbons in the proportions set out in the division order, which division order is prepared by the purchaser, operator, and/or the owner of the right to drill and to produce on the basis of the ownership shown in a title opinion prepared after examination of abstracts or based on other generally acceptable legal ownership documentation and which is executed by the interest owners or others having an interest in the production.

(3) Interest owner. A person owning a royalty interest or a working interest in an oil or gas well or unit.

(b) Whenever payment is made for oil or gas production to an interest owner, whether pursuant to a division order, lease, servitude, or other agreement, all of the following information shall be included on or ascertainable from the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular basis:

(1) Lease, property, or well identification number, if any, or reference to appropriate agreement with identification of the well or unit from which production is attributed.

(2) Month and year of sales or purchases included in the payment.

(3) Total barrels of crude oil or MCF of gas purchased or sold.

(4) Owner's final realizable price per barrel MCF, long ton, or other appropriate measurement.

(5) Total amount of severance and other production taxes, with the exception of windfall profit tax.

- (6) Net value of total sales from the property after taxes are deducted.
- (7) Interest owner's interest, expressed as a decimal fraction, in production from subdivision (1) above.
- (8) Interest owner's share of the total value of sales prior to any tax deductions.
- (9) Interest owner's share of the sales value less the share of the production and severance taxes, as applicable.

(c) The proceeds derived from the sale of oil or gas production from any oil or gas well shall be paid to persons legally entitled thereto, commencing no later than six months after the date of the first sale, and thereafter no later than 60 days after the end of the calendar month within which subsequent production is sold. The payment shall be made to persons legally entitled thereto by the first purchasers of the production by tender to the person's designated agents or at their last known address. The purchasers may remit to the persons entitled to the proceeds from production annually where the aggregate of one year's accumulation of monthly proceeds does not exceed one hundred dollars (\$100). However, the purchaser may hold accumulated proceeds of less than ten dollars (\$10) until production ceases or the purchaser's responsibility for making payment for production ceases, whichever occurs first. On the request of the person legally entitled to the proceeds, the purchaser shall remit payment of accumulated proceeds annually to the person if the purchaser owes the person less than ten dollars (\$10). On the request of the person legally entitled to the proceeds, the purchaser shall remit payment of the proceeds to the person monthly if the purchaser owes the person more than twenty-five dollars (\$25), but less than one hundred dollars (\$100). In addition, before the purchaser accumulates proceeds greater than twenty-five dollars (\$25), the purchaser shall provide notice to the persons entitled to the proceeds that there is an option to be paid monthly for proceeds greater than twenty-five dollars (\$25). The notice to the person entitled to the proceeds shall also provide directions for requesting monthly payment and shall constitute notice to all heirs, successors, representatives, and assigns of the person entitled to the proceeds. As used herein, "first purchase" shall mean the first commercial purchaser of production after completion of the well and shall not include purchasers of oil or gas during initial testing prior to completion of the well; further provided, that any delay in determining the persons legally entitled to an interest in the proceeds from production caused by unmarketable title to the interest shall not affect payment to persons whose title is marketable. In those instances where the proceeds derived from oil or gas produced and sold after May 4, 1982, cannot be paid within the time allowed by this section because the title thereto is not marketable, the purchasers of the production shall remit to the parties ultimately determined to be the legal owners of the production, the full amount of the proceeds plus interest at the rate on a per annum basis equal to the Federal Reserve Discount Rate in effect as of the first day of each month during which interest on the proceeds is payable, the interest to accrue from the date that proceeds were due to persons with marketable title as hereinabove specified. Marketability of title shall be determined in accordance with the then current legally recognized real property law governing title to oil and gas interest. The first purchaser shall be exempt from this subsection and the operator and/or the owner of the right to drill and to produce under an oil and/or gas lease shall be substituted for the first purchaser therein where the operator and/or the owner and purchaser have entered into an arrangement where the proceeds are paid by the purchaser to the operator and/or the owner who assumes responsibility of paying the proceeds to persons legally entitled thereto. Where the operator and/or the owner of the drilling rights are substituted herein for the purchaser, the period of time set forth herein under which the parties must account to persons entitled to the production shall be determined as of the date of receipt of the proceeds for the production as opposed to the date of first sale applicable to the purchaser.

(d) Any first purchaser of production or operator and/or owner of the right to drill substituted for the first commercial purchaser as provided herein, that violates this section shall be liable to the persons legally entitled to the proceeds from production for the unpaid amount of the proceeds plus interest at the rate of 12 percent per annum, the interest accruing from the date at which the proceeds were due as specified herein.

(e) The circuit court for the county or counties in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this section.
(Acts 1982, No. 82-557, p. 917, §§ 1, 3; Acts 1991, No. 91-681, p. 1324, § 1; Act 99-396, p. 657, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1999 amendment, effective September 1, 1999, in subsection (b), in subdivision (7) substituted "subdivision (1)" for "subdivision (b)(1)", in subdivision (8) deleted the concluding "and", and in subdivision (9) substituted "the share" for "his share"; in subsection (c), in the second sentence substituted "The payment shall" for "Such payment is to", in the third sentence substituted "The" for "Provided, such", substituted "annually" for "semi-annually", substituted "one year's" for "six months" and substituted "one hundred dollars (\$100)" for "\$60.00", added the fourth through eighth sentences, in the present tenth sentence substituted "In" for "Provided, however, that in", and in the present twelfth sentence deleted "provisions of" preceding "this subsection"; substituted "the" for "such" throughout this section; and made nonsubstantive changes.

Code Commissioner's Notes

Acts 1991, No. 91-681, which amended this section, in § 3 provides that the provisions of the 1991 act shall become effective the next reporting date after November 6, 1991 except as otherwise herein provided.

In 1999, the Code Commissioner in subdivision (7) of subsection (b) changed the reference from "subparagraph (1)" to "subdivision (1)" to correct a manifest clerical error and reference the appropriate hierarchy unit.

ARTICLE 2. LEASES.**REFERENCES****CROSS REFERENCES**

As to mineral documentary tax, see § 40-20-30 et seq.

DIVISION 1. GENERAL PROVISIONS.**§ 9-17-50. Cancellation on records of lapsed optional leases; liability of lessees for failure or refusal to mark leases cancelled on records, etc., upon request of lessors.**

termination of the full period within which an optional gas and oil lease which is of record may be kept alive by the payments of rentals or by reason of the termination of any of the options in such lease by reason of failure on the part of the lessee to comply with the condition therein for the prevention of forfeiture such lease shall lapse, the lessee must, on request in writing by the lessor, mark same cancelled on the records or must furnish the lessor with an instrument, duly acknowledged, directing the cancellation of such lease on the records.

(b) Any lessee failing or refusing to supply the lessor with such an instrument or failing or refusing to cancel any lease on the records within 30 days after receiving written demand as above shall be liable to such lessor for a reasonable attorney's fee incurred by the lessor in bringing suit to have such forfeiture and cancellation adjudged and, in addition thereto, shall be liable to the lessor for all damages suffered by the lessor by reason of his inability to make any lease on account of the first lease not having been cancelled. (Acts 1945, No. 3, p. 26, §§ 1, 2.)


DIVISION 2. LEASES BY STATE.**§ 9-17-60. Authorization for leasing of certain state lands for exploration, development and production -- Lands of Department of Conservation and Natural Resources. [References](#)**

The Commissioner of Conservation and Natural Resources, on behalf of the state, is hereby authorized to lease any lands or interest therein under the jurisdiction of the Department of Conservation and Natural Resources for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands.
(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  5.2.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 138-139.

§ 9-17-61. Authorization for leasing of certain state lands for exploration, development and production -- Lands of other state departments, institutions or agencies.

Conservation and Natural Resources, on behalf of the state, is hereby authorized, upon the written request of the head of any state department, institution or agency, to lease any land or interest therein owned by such department, institution or agency or in which such department, institution or agency has the beneficial interest for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 2.)

§ 9-17-62. Authorization for leasing of certain state lands for exploration, development and production -- Lands under navigable streams, waters, etc.

Natural Resources, on behalf of the state, is hereby authorized to lease, upon such terms as he may approve, any lands or any right or any interest therein under any navigable streams or navigable waters, bays, estuaries, lagoons, bayous or lakes and the shores along any navigable waters to high tide mark and submerged lands in the Gulf of Mexico within the historic seaward boundary of this state, which is hereby declared to extend seaward six leagues from the land bordering the gulf, for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands, and such lands or interests therein for such purposes shall be supervised and managed by the Department of Conservation and Natural Resources.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 4.)

§ 9-17-63. Leases may authorize pooling or unitization. [References](#)


Any lease executed under the provisions of this division may authorize the lessee to pool or unitize the lease, the lands or minerals covered thereby or any part thereof with other lands, leases or mineral estates or parts thereof upon such terms as the Commissioner of Conservation and Natural Resources may approve.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  5.2, 92.78.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 138-139, 349, 357-360, 384-386.

§ 9-17-64. Execution of pooling or unitization agreements or amendments to leases to authorize same.

terms as he may approve:

(1) Pooling or unitization agreements affecting oil, gas and other minerals or any one or more of them, on, in or under lands within the jurisdiction of the Department of Conservation and Natural Resources so as to pool or unitize such interests in oil, gas and other minerals or any one of them with similar interests in other lands; and

(2) Agreements with lessees amending existing leases so as to authorize lessees to pool or unitize the leases, the lands or minerals covered thereby or any part thereof with other leases, lands or mineral estates or parts thereof, and to add to or change any other provisions thereof in order to make such existing lease(s) similar on those points with the lease form then being used by the Commissioner of Conservation and Natural Resources in making leases of similar state-owned property, except that no such change or addition may be made which changes the number of years stated as the primary term, or the lease bonuses, delay rentals, royalties, or any other compensation to be paid under the terms of such existing leases.

All pooling or unitization agreements or agreements amending existing leases or any part thereof executed under the provisions of this section by the Commissioner of Conservation and Natural Resources must be approved in writing by the Governor.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 5; Acts 1982, No. 82-622, p. 1177, § 1.)

§ 9-17-65. Lands to be leased upon basis of competitive bids; invitations for bids; opening of bids; acceptance or rejection of bids.

be leased only upon the basis of competitive bids. The Commissioner of Conservation and Natural Resources shall obtain written, sealed competitive bids on every proposed lease of each tract of such land. Invitations for bids shall be published in The Montgomery Advertiser, Montgomery, Alabama, at least 25 days before the final date for submitting bids. Invitations for bids shall contain a statement as to the final date for submitting bids; the time and place at which the bids will be opened; and a legal description of the location and the approximate acreage of the tract of land proposed to be leased. Publication of the invitations for bids shall also be placed in a newspaper published in the county or counties in which the land is located; however, if a typographical error appears in such ad or ads, same shall not invalidate the sale; provided, that no tract of land containing more than 5,200 acres shall be leased or advertised for lease under the provisions of this division.

Bids shall be opened publicly in the office of the Commissioner of Conservation and Natural Resources at the time stated in the invitations for bids.

The lease of any tract of land shall be awarded to the highest responsible bidder making the most advantageous offer to the state, and the Commissioner of Conservation and Natural Resources must either accept the most advantageous offer or reject all bids within five days from the date said bids were opened. The Commissioner of Conservation and Natural Resources may reject all bids on any tract of land when, in his opinion, the public interest will be served thereby, but such tract of land shall not thereafter be leased except in accordance with the provisions of this division.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 6; Acts 1957, No. 611, p. 877, § 1; Acts 1969, No. 479, p. 935, § 1.)

§ 9-17-66. Parties requesting advertisement of lands for lease purposes to pay for necessary legal advertisement.

advertise state lands for oil and gas lease purposes shall be required to pay for the necessary legal advertisements for such sales.

(Acts 1963, No. 529, p. 1141, § 1.)

§ 9-17-67. Charges for oil and gas lease tract charts.

Resources is hereby authorized to provide for a reasonable charge for its oil and gas lease tract charts, such

charge to be based upon the cost of printing, handling and mailing by the Department of Conservation and Natural Resources.
(Acts 1963, No. 529, p. 1141, § 2.)

§ 9-17-68. Revenues from leases -- Disposition.

this division from rentals, royalties and all other sources subject to the cost of administration shall be the property of the department or institution to which said lands belong or in which said department or institution shall own the beneficial interest. All revenue accruing from the lease of the bed of any navigable streams, waterways, bays, estuaries, lagoons, bayous, lakes and any submerged lands in the Gulf of Mexico within the historic seaward boundary of this state, subject to the cost of administration, shall be paid by the Commissioner of Conservation and Natural Resources to the State Treasurer to become a part of the General Funds of the State of Alabama. The Division of Lands of the Department of Conservation and Natural Resources shall be entitled to 10 percent of all revenues, including royalty, bonus and rentals, derived under the provisions of this division as cost of administration. Such cost of administration shall be covered into the State Treasury by the Commissioner of Conservation and Natural Resources to the credit of the State Lands Fund.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 7; Acts 1969, No. 479, p. 935, § 1.)

§ 9-17-69. Revenues from leases -- Expenditure.

unless and to the extent appropriated by law.

(Acts 1956, 1st Ex. Sess., No. 158, p. 224, § 8.)

ARTICLE 3. UNIT OPERATIONS.

§ 9-17-80. Enhanced recovery methods. [Historical Notes](#)

The phrase "enhanced recovery methods" as used herein shall mean the increased recovery from a pool of oil or gas achieved by artificial means or by the application of energy extrinsic to the pool, including repressuring, cycling, pressure maintenance, injection, or any other enhanced recovery methods of producing hydrocarbons recognized by the oil and gas industry and approved by the board.

(Acts 1957, No. 352, p. 461, § 9; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, rewrote this section.

§ 9-17-81. Meeting of board to consider need for unit operation. [Historical Notes](#) [Annotations](#)

In order to promote the conservation of oil and gas resources, prevent waste, avoid the drilling of unnecessary wells, allow the drilling of wells at optimum geologic locations, and protect correlative rights, the State Oil and Gas Board of Alabama upon its own motion may, or upon the petition of any interested person shall, hold a hearing to consider the need for the operation as a unit of an entire field or of any pool or pools or of any portion of a pool or combinations thereof within a field for the production of oil or gas or both in order to increase the ultimate recovery by enhanced recovery methods or any other method of cooperative development and operation calculated to increase the ultimate recovery of oil or gas.

(Acts 1957, No. 352, p. 461, § 1; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, rewrote this section.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

There is no statutory requirement that there must be substantial evidence to support a finding by the board, as is the case of an order of the Alabama Public Service Commission under § 37-1-124. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

Cited in *Ancora Corp. v. Miller Oil Purchasing Co.*, 396 So.2d 672 (Ala.1981).

§ 9-17-82. Order requiring unit operation -- When issued. [Historical Notes](#) [Annotations](#)

The board shall issue an order requiring such unit operation if it finds that:

(1) Unit operation of the field or of any pool or pools or of any portion of a pool or combinations thereof within the field is reasonably necessary to prevent waste, to increase the ultimate recovery of oil or gas, to avoid the drilling of unnecessary wells, to allow the drilling of wells at optimum geologic locations, and to protect the correlative rights of interested parties.

(2) The proposed plan for unit operations will increase the ultimate recovery of oil or gas by enhanced recovery methods or any other method of cooperative development and operation calculated to increase the ultimate recovery of oil or gas.

(3) The estimated additional cost incident to conduction of such operation will not exceed the value of the estimated additional recovery of oil or gas.

(Acts 1957, No. 352, p. 461, § 2; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subdivision (1) substituted "of a pool" for "or portions", inserted "ultimate", inserted ", to avoid the drilling of unnecessary wells, to allow the drilling of wells at optimum geologic locations,", and substituted the concluding period for "; and", redesignated former subdivision (2) as subdivision (3), and added subdivision (2).

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

It is precisely because of the state's interest in preventing loss or waste of minerals that the board is authorized to establish drilling units. *Mize v. Exxon Corp.*, 1981, 640 F.2d 637. *Mines And Minerals*

 92.79

Cited in State Oil & Gas Bd. v. Seaman Paper Co., 285 Ala. 725, 235 So.2d 860 (1970); Ancora Corp. v. Miller Oil Purchasing Co., 396 So.2d 672 (Ala.1981).

§ 9-17-83. Order requiring unit operation -- Contents. [Annotations](#)

The order shall be fair and reasonable under all the circumstances, shall protect the rights of interested parties and shall include:

(1) A description of the area embraced, termed the unit area, and a description of the pool or pools or portions thereof affected and lying within the unit area, termed the unit pool.

(2) A statement of the nature of the operations contemplated.

(3) An allocation among the separately owned interests derived from or associated with tracts in the unit area of all the oil or gas, or both, produced from the unit pool within the unit area, and not required in the conduct of such operation or unavoidably lost, such allocation to be based on the relative contribution which each such tract or interest is expected to make during the course of such operation, to the total production of oil or gas, or both, so allocated.

(4) A provision for adjustment among the owners of the unit area (not including royalty owners, except as otherwise hereinafter provided) of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such items shall be determined by the owners of the unit area (not including royalty owners, except as otherwise hereinafter provided); provided, that, if said owners of the unit area are not able to agree upon the amount of such charges, or to agree upon the correctness thereof, the board shall determine them after due notice and hearing thereon, upon the application of any interested party. The net amount charged against the owner of a separately owned tract or separately owned interest derived from or associated with a tract within the unit shall be considered expense of unit operation chargeable against such tract or interest. The adjustments provided for in this subdivision may be treated separately and handled by agreements separate from the unitization agreement.

(5) A provision that the costs and expenses of unit operation, including investment, past and prospective be charged to the separately owned tracts or interests in the same proportions that such tracts or interests share in unit production, as provided in subdivision (3) of this section. The expenses chargeable to a tract or interest shall be paid by the person or persons not entitled to share in production free of operating costs and who, in the absence of unit operation, would be responsible for the expense of developing and operating such tract or interest, and such person or person's interest in the separately owned tract or interest shall be primarily responsible therefor.

(6) The designation of, or a provision for the selection of, a unit operator. The conduct of all unit operations by the unit operator and the selection of a successor to the unit operator designated by the board shall be governed by the terms and provisions of the unitization agreement.

(7) A provision that when the full amount of any charge made against a separately owned tract or interest is not paid when due by the person or persons primarily responsible therefor, as provided in subdivision (5) of this section, then seven-eighths of the oil and gas production allocated to such separately owned tract or interest may be appropriated by the unit operator and marketed and sold for the payment of such charge, together with interest at the rate of five percent per annum thereon. A one-eighth part of the unit production allocated to each separately owned tract or interest shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to, the royalty owners, free and clear of all unit expense and free and clear of any lien therefor. The owner of any overriding royalty, oil and gas payment, royalty in excess of one-eighth of production, or other interests, who is not primarily responsible therefor shall, to the extent of such payment or deduction from his share, be subrogated to all the rights of the unit operator with respect to the interest or interests primarily responsible for such payment; provided, however, such right of subrogation shall not apply, inure to or exist for the benefit of the owner of any overriding royalty, oil and gas payment, royalty in excess of one-eighth of production, or other interest, who is not primarily responsible therefor, in any oil production unit from the lower cretaceous geological formation between depths of 10,500 feet and 11,500 feet subsea in which tertiary recovery methods are utilized. The owner of such overriding royalty, oil and gas payment, royalty in excess of one-eighth of production, or other interest in any oil production unit from the lower cretaceous geological formation between depths of 10,500

feet and 11,500 feet subsea in which tertiary recovery methods are utilized shall bear his fair share of all capital and operating costs incurred by a unit operator from the first day of the month next succeeding the month during which such tertiary recovery methods are initiated and implemented in the production unit, and the owner of such interest shall continue to bear his share of both capital and operating cost so long as such unit is producing oil or gas utilizing tertiary recovery methods. The term "tertiary recovery methods" as used herein shall include, but shall not be limited to, the maintenance or partial maintenance of reservoir pressures by any method recognized by the industry as a tertiary method of recovery and approved by the board, recycling, injecting or flooding a pool, or pools, or parts thereof, with air, gas, water, hydrocarbons, carbon dioxide (CO₂) or any other substance, or any combination or combinations thereof, the use of polymers, steam flooding or fire flooding, or any other tertiary method of producing hydrocarbons recognized by the industry and approved by the board. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted in the proportion of their respective interest.

(8) The time the unit operation shall become effective and the manner in which and the circumstances under which the unit operation shall terminate.
(Acts 1957, No. 352, p. 461, § 3; Acts 1978, No. 724, p. 1043, § 1; Acts 1979, No. 79-622, p. 1103, § 1.)

ANNOTATIONS

CASENOTES

Constitutionality 1 enter p
Particular circumstances 2 enter p

1. Constitutionality

The unitization statute affords full due process protection at the time of unitization. *Ancora Corp. v. Miller Oil Purchasing Co.*, 396 So.2d 672 (Ala.1981).

2. Particular circumstances

Owner held liable for pro rata share of production expenses. See *Wood v. Citronelle-Mobile Gathering System Co.*, 279 Ala. 662, 189 So.2d 346 (Ala.1966).

Cited in *State Oil & Gas Bd. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (1970); *Ancora Corp. v. Miller Oil Purchasing Co.*, 361 So.2d 1008 (Ala.1978); *State Oil & Gas Bd. v. Anderson*, 510 So.2d 250 (Ala.Civ.App.1987).

§ 9-17-84. Order requiring unit operation -- When effective; when automatically revoked.

[Historical Notes](#) [Annotations](#)

An order requiring unit operation shall not become effective unless and until agreements incorporating the provisions of Section 9-17-83 have been signed or in writing ratified or approved by the owners of at least 66 2/3 percent in interest as costs are shared under the terms of the allocation formula established by the board in the order pursuant to Section 9-17-83(3) and by 66 2/3 percent in interest of the royalty owners in the unit area as revenues are distributed under the terms of the allocation formula established by the board in the order pursuant to Section 9-17-83(3), and the board has made a finding to that effect either in the order or in a supplemental order. In the event the required percentage interests have not signed, ratified, or approved the order or agreements within six months from and after the date of the order it shall be automatically revoked.

(Acts 1957, No. 352, p. 461, § 4; Acts 1965, 2nd Ex. Sess., No. 80, p. 110, § 1; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, substituted "66 2/3 percent" for "75 percent" in two places, substituted "allocation formula established by the board in the order pursuant to Section 9-17-83(3)" for "order", "royalty owners in the unit area as revenues are distributed under the terms of the allocation formula established by the board in the order pursuant to Section 9-17-83(3)," for "royalty and overriding royalty owners in the unit area", inserted a comma following "ratified", deleted "said" preceding "agreements within six months", and substituted "the" for "such" following "after the date of".

ANNOTATIONS

CASENOTES

Ratification 1 enter p

1. Ratification

Sufficient evidence was presented to the board to show consent or ratification where the unit manager testified, as the only person with personal knowledge concerning the obtaining of said approvals, and all matters to which he testified were within his personal knowledge, based on an examination of the documents he had sent out to the owners and the replies which he had received, and where that ratification had either been recorded in the office of the probate judge in and for the county, or was included in an affidavit by the unit manager and recorded in the office of the probate judge in and for the county. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

Cited in *Wood v. Citronelle-Mobile Gathering Sys. Co.*, 279 Ala. 662, 189 So.2d 346 (1966).

§ 9-17-85. New or amending orders. [Historical Notes](#) [Annotations](#)

(a) The board, by entry of new or amending orders, may from time to time add to unit operations portions of pools not theretofore included and may add to unit operations new pools or portions thereof and may extend the unit area as required. Any such order, in providing for allocation of production from the unit pool of the unit area, shall first allocate to the pool or pools or portion thereof so added a portion of the total production of oil or gas or both from all pools affected within the unit area as enlarged, (and not required in the conduct of unit operations or unavoidably lost), the allocation to be based on the relative contribution which such added pool or pools or portion thereof is expected to make during the remaining course of unit operations to the total production of oil or gas or both so allocated. The production so allocated to the added pool or pools or portions thereof shall be allocated to the separately owned tracts which participate in the production on the basis of the relative contribution of each tract as provided in subdivision (3) of Section 9-17-83. The remaining portion of unit production shall be allocated among the separately owned tracts within the previously established unit area in the same proportions as those specified in the previous order. Orders promulgated under this paragraph shall become operative at 7:00 A.M. on the first day of the month next following the day on which the order becomes effective under the provisions of subsection (b) of this section.

(b) An order promulgated by the board under subsection (a) of this section shall not become effective unless and until the following occur:

(1) All of the terms and provisions of the unitization agreement relating to the extension or enlargement of the unit area or to the addition of pools or portions thereof to unit operations have been fulfilled and satisfied and evidence thereof has been submitted to the board.

(2) The extension or addition effected by the order has been agreed to in writing by the owners of at least 66 2/3 percent in interest as costs are shared under the terms of the allocation formula established by the board in the area or pools or portions thereof to be added to the unit operation by the order and by 66 2/3 percent in interest of the royalty owners as revenues are distributed under the terms of the allocation formula established by the board in the area or pools or portions thereof to be added to the unit operations by such order, and evidence thereof has been submitted to the board.

In the event both of the above requirements are not fulfilled within six months from and after the date of such order, it shall be automatically revoked.

(c) After the operative date of an order promulgated under this section, costs and expenses of operation of the unit as enlarged shall be governed by subdivision (5) of Section 9-17-83. Adjustment among the owners of the unit area as enlarged (not including royalty owners) of their respective investments in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the operation of the unit as enlarged shall be governed by subdivision (4) of Section 9-17-83. (Acts 1957, No. 352, p. 461, § 5; Acts 1965, 2nd Ex. Sess., No. 80, p. 110, § 1; Acts 1969, No. 733, p. 1287, § 1; Act 2000-714, p. 1517, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a) substituted "the" for "such" in four places, and deleted "such" preceding "tract as provided in"; in subsection (b), in the introductory matter inserted "the following occur", in subdivision (1) substituted the concluding period for ", and", and in subdivision (2) substituted "the" for "such" in two places, substituted "66 2/3 percent" for "75 percent" in two places, substituted "shared under the terms of the allocation formula established by the board in the area" for "shared of the area", and substituted "royalty owners as revenues are distributed under the terms of the allocation formula established by the board" for "royalty and overriding royalty owners"; and in subsection (c) made nonsubstantive changes.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Applicability 3 enter p
Practice and procedure 4 enter p
Purpose 2 enter p

1. Generally

By approving an enlargement agreement, the board in effect may incorporate it into its orders and the allocations as made in the enlargement agreement as those of the board, and the responsibility of the unit manager or other unit officials goes no further than to put into effect the allocations which the board has prescribed. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

2. Purpose


Legislative intent of this section is expressed in subsection (b) of this section. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

3. Applicability

The provisions of this section apply where a portion of a pool not previously affected by an existing unit operation is added to that operation by an enlargement order, as well as to instances where the enlargement order adds to unit operations new pools or portions thereof. *State Oil and Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 235 So.2d 860 (Ala.1970).

4. Practice and procedure

Owners of parcels of land outside a secondary recovery unit engaged in an improper collateral attack on the order of the State Oil and Gas Board creating the unit, by bringing an action against a petroleum company stemming from the company's alleged drainage of the owners' lands by the company's oil and gas recovery operations on the unit; the Board had expressly found that the unit was being created to prevent waste and to protect the rights of all the owners of interests in the unitized area, and the owners had failed

to petition for another hearing to add their parcels to the unit. Phillips Petroleum Co. v. Stryker, 723 So.2d 585 (Ala.1998), rehearing denied. Mines And Minerals  92.79

§ 9-17-86. Alteration of contribution of separately owned tract.

owned tract with respect to any unit pool has been established pursuant to subdivision (3) of Section 9-17-83, such contribution shall not be subsequently altered, unless the board shall find, after notice and hearing, that such contribution was erroneous because shown to be erroneous by subsequently discovered data or by subsequently discovered errors in the data upon which the original contribution was established. No change or correction of the contribution of any separately owned tract shall be given retroactive effect; provided, that appropriate adjustment shall be made for the investment charges as provided for in subdivision (4) of Section 9-17-83.

(Acts 1957, No. 352, p. 461, § 6.)

§ 9-17-87. Production and operations deemed to be those of separately owned tracts.

unit production allocated to a separately owned tract within the unit area shall be deemed for all purposes to have been actually produced from such tract, and operations with respect to any unit pool within the unit area shall be deemed for all purposes to be the conduct of operations for the production of oil or gas or both from each separately owned tract in the unit area.

(Acts 1957, No. 352, p. 461, § 7.)

§ 9-17-88. Applicability of article.

the unitization of interests within a drilling unit as may be authorized and governed under the provisions of Article 1 of this chapter.

(Acts 1957, No. 352, p. 461, § 8.)

Code of Alabama 1975, Sections 130 through 157

ARTICLE 5. COALBED METHANE GAS WELL PLUGGING FUND.

§ 9-17-130. Legislative findings and declaration.

declares that the protection of Alabama's environment is vital to the economy of this state; that coalbed methane gas wells are an important source of natural gas for use in industry and by consumers thereof in Alabama and are becoming increasingly common in Alabama as the technology for such wells advances; that the broadest possible promotion of public and private interests requires that coalbed methane gas wells be properly plugged when abandoned; that delays therein may affect the environment or public health, safety and welfare; that adequate financial resources be readily available to provide for the expeditious plugging of such wells and to provide a means for doing so without delay; that the Legislature has heretofore authorized the State Oil and Gas Board of Alabama to require that operators of such wells provide evidence of financial responsibility to cover the costs of plugging such wells; that performance bonds so required and obtained for such purpose may not be adequate in amount or even obtainable in the present insurance market; and that the health, safety, and welfare of the citizens of the State of Alabama will be enhanced and protected by the provisions of this article.

(Acts 1990, No. 90-635, p. 1164, § 1.)

§ 9-17-131. Short title.

Fund Act."

(Acts 1990, No. 90-635, p. 1164, § 2.)

§ 9-17-132. Definitions.

shall have the meanings respectively ascribed to them by this section:

(1) Board. The State Oil and Gas Board created in Section 9-17-3.

(2) Fund. The Alabama Coalbed Methane Gas Well Plugging Fund established in Section 9-17-133.

(3) Coalbed methane gas well. A well capable of producing occluded natural gas from a coalbed or coalbeds.

(4) Plugging fee. The fee authorized by Section 9-17-137.

(5) Operator. Any person who notifies the supervisor pursuant to Section 9-17-24 of such person's desire or proposal to drill a coalbed methane gas well.

(6) Person. Any natural person, firm, corporation, association, partnership, joint venture, receiver, trustee, guardian, executor, administrator, fiduciary, representative of any kind or any other group acting as a unit.

(7) Supervisor. The state oil and gas supervisor.

(Acts 1990, No. 90-635, p. 1164, § 3.)

§ 9-17-133. Alabama Coalbed Methane Gas Well Plugging Fund.

Coalbed Methane Gas Well Plugging Fund to be held by the State Treasurer and administered by the supervisor. The fund shall be used for carrying out the purposes of this article. To the fund shall be credited all the plugging fee revenues levied, collected and credited thereto pursuant to Section 9-17-137. Charges against and disbursements from the fund shall be made only in accordance with the provisions of this article.

(Acts 1990, No. 90-635, p. 1164, § 4.)

§ 9-17-134. Determination by board of coalbed methane gas wells requiring plugging.

the determination of the board, after reasonable notice to the operator of a coalbed methane gas well and a

hearing held by the board and pursuant to such notice:

(1) The failure of the operator of a coalbed methane gas well to plug such well may pose a threat to the environment or to the public health, safety or welfare,

(2) The operator of said well shall have failed or refused to plug such coalbed methane gas well within a period deemed reasonable by the board, and

(3) The bond or other security filed by such operator under Section 9-17-6(c)(5) is or is expected to be inadequate to provide for the payment of the costs of plugging said well, the board shall undertake to provide for the proper plugging of said well through the use of moneys in the fund, provided that moneys adequate for such purpose, taking into account the aforesaid bond or other surety, shall then be on deposit in the fund.

(Acts 1990, No. 90-635, p. 1164, § 5.)

§ 9-17-135. Action authorized to be taken by board.

Section 9-17-134, the board shall first collect the proceeds of the bond or bonds or the blanket bond of the operator filed as security under Section 9-17-6(c)(5), and shall forthwith apply the proceeds of such bond or bonds to the expense of causing such well or wells with respect to which such determination shall have been made to be plugged, which action the board is hereby authorized to take either directly or through contracts therefor entered into by the board with private persons or with other governmental agencies. Should the board determine that the proceeds of such bond or bonds are in fact insufficient to cover the entire expense of causing such well or wells to be plugged, the supervisor shall be authorized to execute and verify itemized vouchers to be submitted to the state Comptroller for the withdrawal from the fund of amounts equal to such expenses as may be incurred by the board in connection therewith in excess of bond coverage. Upon the presentation of such vouchers, there is hereby appropriated from moneys in the fund such amount as shall be necessary for the payment of such expenses, and the state Comptroller is authorized to issue appropriate warrants on the State Treasurer for reimbursement to the board of such expenses incurred by it in taking the aforesaid action to plug coalbed methane gas wells or for payment of such private persons or governmental agencies as shall have been engaged by the board to take such action pursuant to the provisions hereof.

(Acts 1990, No. 90-635, p. 1164, § 6.)

§ 9-17-136. Liability of owners and operators.

shall have been incurred by the board pursuant to this article and the board shall have authorized the expenditure of moneys from the fund pursuant to Section 9-17-135 for the purpose of plugging a coalbed methane gas well, the operator thereof and each and every owner of a working interest in the well bore of such well shall be jointly and severally liable to the state for repayment of the amount of such moneys, and the board is authorized to institute appropriate civil actions in the courts in the name of the state to recover such amounts. Any amounts so recovered shall be paid into the fund. Further, nothing in this article shall be construed to relieve any operator or owner of a working interest in the well bore of any coalbed methane gas well of any liability to any third party for damages incurred because of failure to plug any coalbed methane gas well.

(Acts 1990, No. 90-635, p. 1164, § 7.)

§ 9-17-137. Plugging fees payable into fund; investment and use of fund.

requirements and fees provided for in Section 9-17-24(a), any person desiring, after April 25, 1990, to drill any coalbed methane gas well in this state shall pay to the state a plugging fee of \$150.00 respecting each such well desired to be drilled, such plugging fees to be deposited with the State Treasurer in the fund; provided, however, that no plugging fees shall be required to be paid during any time when the unobligated balance of the fund shall exceed the sum of \$1,000,000. Any provisions of law to the contrary notwithstanding, no permit for the drilling of any coalbed methane gas well shall be issued by the board until the fee provided for in this section shall be paid, if due.

(b) The moneys in the fund shall be invested by the State Treasurer of Alabama in the same manner as

state funds generally; provided, however, that only 50 percent of all interest and earnings accruing thereon shall be credited to the State General Fund and the remainder shall be credited to the fund; said moneys and the interest and earnings credited to the fund shall be used only for the purposes set forth in this article and for no other purposes, and no portion thereof shall be available for loan to any agency or branch of state government, it being the intent of the Legislature that the fund shall remain intact and inviolate for the purposes set out in this article or until terminated as provided herein.

(c) Moneys in the fund shall be paid out only by warrant of the state Comptroller upon the State Treasurer, upon itemized vouchers executed by the supervisor as provided in Section 9-17-135, and in the event of termination of the fund as provided herein.
(Acts 1990, No. 90-635, p. 1164, § 8.)

§ 9-17-138. Termination of fund.

State of Alabama have been plugged and abandoned, or should the board determine, after notice and hearing, that the fund is no longer necessary in order to carry out the purposes of this article, then the supervisor shall so certify this determination to the state Comptroller and the State Treasurer and all moneys in the fund shall, promptly following the filing with the state Comptroller and the State Treasurer of such certification, be disbursed and are hereby appropriated to all counties in the State of Alabama where coalbed methane gas wells shall have been permitted pursuant to the provisions of this chapter, to be divided among such counties based on the number of coalbed methane gas wells permitted in each such county, for deposit into the general funds of such counties, and to be used for those purposes for which said general funds were established.

(Acts 1990, No. 90-635, p. 1164, § 9.)

§ 9-17-139. No liability of state, board or supervisor to third parties.

establish or create any liability or responsibility on the part of the board, the supervisor or the State of Alabama to pay any costs incurred or damages incurred or damages suffered by any person or to pay any third party claims from any source arising from the failure of any coalbed methane gas well to be properly plugged, nor shall moneys in the fund be used to make any payments of such costs or damages.

(Acts 1990, No. 90-635, p. 1164, § 10.)

ARTICLE 6. UNDERGROUND GAS STORAGE.

§ 9-17-150. Definitions.

shall have the following meanings when found in this article:

- (1) Underground storage. Storage in an underground reservoir.
 - (2) Gas. All natural gas, casinghead gas, and occluded natural gas found in coal beds, and all other hydrocarbons not defined as oil in Section 9-17-1(3), except and not including liquid petroleum gas.
 - (3) Underground reservoir. Any subsurface sand, stratum, formation, aquifer, or cavity, cavern or void (whether natural or artificially created), suitable for or capable of being made suitable for the injection and storage of gas therein and the withdrawal of gas therefrom.
 - (4) Storage facility. Any underground reservoir used or to be used for the underground storage of gas and all surface and subsurface rights and appurtenances necessary or useful in the operation of the facility for the underground storage of gas, including any necessary or reasonable buffer zone as designated by the board for the purpose of insuring the safe operation of the storage of gas and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom, together with any and all subsequent extensions thereof.
 - (5) Storage operator. Any company, person, corporation, partnership, limited partnership, association of persons, municipality, association of municipalities, public utility, gas district, or other entity, authorized by the State Oil and Gas Board pursuant to Section 9-17-152 to operate any storage facility as defined in this section.
 - (6) State Oil and Gas Board or Board. The State Oil and Gas Board of Alabama; and
 - (7) Code. The Code of Alabama 1975, as amended.
- (Acts 1992, No. 92-564, p. 1172, § 1.)

§ 9-17-151. Legislative declaration; jurisdiction. [Historical Notes](#)

(a) The underground storage of gas which promotes the conservation thereof, which permits the accumulation of large quantities of gas in reserve for orderly withdrawal in periods of peak demand, making gas more readily available to commercial, industrial or residential consumers, or which provides more uniform withdrawal from various gas or oil fields, is in the public interest and welfare of this state and is for a public purpose.

(b) The State Oil and Gas Board shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this article concerning the underground storage of gas. In exercising such jurisdiction and authority, the board shall have and may exercise all powers and authorities granted to it pursuant to Article 1 of this chapter with respect to holding hearings and promulgating and enforcing rules, regulations, and orders.

(Acts 1992, No. 92-564, p. 1172, § 2.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

In 2001, the Code Commissioner in subsection (b) inserted "of this chapter" for ", Chapter 17, Title 9" after "Article 1" for clarity.

§ 9-17-152. Board approval; recordation of order; certificate of effectiveness; dissolution of fields and units; determination of commercial reserves; creation of cavities.

reservoir as a storage facility for gas is hereby authorized, provided that the board shall first enter an order, after notice and hearing pursuant to the provisions of Sections 9-17-3 to 9-17-8, inclusive, approving such

proposed underground storage of gas and designating the horizontal and vertical boundaries of the storage facility, such boundaries to include within them any necessary or reasonable buffer zone for the purpose of insuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom, upon finding as follows:

(1) That the storage facility is suitable and feasible for the injection, storage and withdrawal of gas and has a greater value or utility for the storage of gas than for the production of any remaining volumes of presently commercially recoverable hydrocarbons and its use for such purpose is in the public interest;

(2) That the underground reservoir to be used for underground storage of gas does not contain proven commercially producible accumulations of oil or gas or both; or, in the alternative, if the underground reservoir to be used for underground storage of gas includes any pool (or portion thereof) that contains proven commercially producible accumulations of oil or gas or both, that a majority in interest, as calculated on a surface acre basis, of all owners (as owner is defined in Section 9-17-1(7), to be "The person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another or others.") in the pool has or have consented to such use in writing;

(3) That the use of the storage facility for the underground storage of gas will not contaminate other formations containing fresh water or containing oil, gas or other commercial mineral deposits; and

(4) That the proposed storage will not unduly endanger lives or property.

(b) Upon the board's issuing an order of approval as set forth above, said order, or a certified copy thereof, shall be filed for record in the probate court of the county or counties in which the storage facility is to be located.

(c) Prior to commencing injection of gas, the storage operator shall file for record in the probate court of the county or counties in which the storage facility is located, and with the board, a certificate, entitled a certificate of effectiveness, which shall contain a statement that the storage operator has acquired by eminent domain or otherwise all necessary ownership rights with respect to the storage facility, and the date upon which the storage facility shall be effective.

(d) If any pool (or portion thereof) for any previously established field(s) or producing unit(s) is contained within the boundaries of the storage facility, the board's order of approval for such storage facility shall provide that such field(s) or unit(s) shall be dissolved as to such pool(s) as of the effective date of the storage facility (as set forth in the certificate of effectiveness).

(e) If an underground reservoir that contains commercially recoverable oil and/or gas has been approved, as hereinabove provided, for use as a storage facility, the board shall, after notice and hearing pursuant to the provisions of Sections 9-17-3 through 9-17-8, inclusive, determine the amount of remaining commercially recoverable oil and/or gas in said reservoir and shall set forth its determination in an order supplemental to its order of approval. As a part of the board's determination contained in such supplemental order, the board shall determine a period of time which encompasses the remaining natural production capability of the underground reservoir to produce such commercially recoverable gas and then determine an apportionment of the total volume of such gas withdrawn from the storage facility between (i) injected gas withdrawn from storage and (ii) production of said remaining commercially recoverable gas in said reservoir. All volumes of such gas deemed production under clause (ii) herein shall be subject to the levy of applicable severance taxes under Article 1, Chapter 20 of Title 40.

(f) Nothing herein shall be construed to limit or restrict the right of anyone to create, for the purpose of later use as an underground reservoir for underground storage of gas, a cavity in a salt dome even though the board has not issued an order of approval under subsection (a) above for the storage of gas in said cavity, provided that actual injection of gas in said cavity shall not be commenced until such an order of approval shall have been issued by the board and provided further that such cavity and the operations for the creation thereof do not violate the provisions of any rule, regulation, or order issued by the board under Section 9-17-153(a) for the protection of any previously approved storage facility.

(Acts 1992, No. 92-564, p. 1172, § 3.)

§ 9-17-153. Protection against pollution and escape of gas; property rights.

such orders, rules and regulations as may be necessary for the purpose of protecting any such storage

facility against pollution, invasion, and the escape or migration of gas therefrom, including such necessary orders, rules and regulations as may pertain to the drilling into or through such storage facility.

(b) Any and all hydrocarbons which are within the storage facility on May 21, 1992 and at all times thereafter and which have been acquired by the storage operator by condemnation or otherwise and any and all gas injected into said facility by the storage operator shall be deemed the property of the storage operator, his heirs, successors and assigns, and in no event shall such hydrocarbons or injected gas be subject to the right of the owner of the surface of the lands or of any mineral interest therein under which such storage facility shall lie or be adjacent to or of any person other than the storage operator, his heirs, successors and assigns, to produce, take, reduce to possession, waste or otherwise interfere with or exercise any control thereover.

(Acts 1992, No. 92-564, p. 1172, § 4.)

§ 9-17-154. Eminent domain.

the board as herein required, to exercise the right of eminent domain in the manner provided by law, to acquire all surface and subsurface rights and interests necessary or useful for the purpose of operating the storage facility (including easements and rights-of-way across lands for transporting, by pipeline or otherwise, gas to and from said facility) and to exercise eminent domain rights to acquire any hydrocarbons therein, pursuant to the provisions hereof. Such power shall be exercised under the procedure provided by Chapter 1A, Title 18.

(b) No rights or interests in storage facilities acquired for the injection, storage and withdrawal of gas by a party who has eminent domain rights under this act and who has obtained an order from the board under the provisions of Section 9-17-152, shall be subject to the exercise of any eminent domain rights; and no portion of any salt dome (including any cavity therein) and no portion of any lands within a radial distance of 1500 feet from the outer wall of a salt dome may be acquired, by exercise of the eminent domain rights granted hereunder, for use as an underground reservoir for storage of gas unless the storage operator has first obtained the consent, in writing, to such use from: (a) at least a 75% in interest (as calculated on a surface acre basis) of the owners of the salt in that portion of the salt dome that is to be acquired or that is within a radial distance of 1500 feet of the proposed underground reservoir, and (b) if said portion of the salt dome is subject to a salt lease, at least 75% in interest (as calculated on a surface acre basis) of the owners of the lessee's rights under said lease.

(Acts 1992, No. 92-564, p. 1172, § 5.)

§ 9-17-155. Right of landowner to drill and make other use of land.

granted by Section 9-17-154 shall be without prejudice to the right of the owner of said land or of other rights or interests therein to drill or bore through the storage facility so appropriated in such manner as shall comply with orders, rules and regulations of the board issued for the purpose of protecting the storage facility against pollution or invasion and against the escape or migration of gas therefrom, and shall be without prejudice to the rights of the owners of said lands or other rights or interests therein as to all other uses not acquired for the storage facility.

(Acts 1992, No. 92-564, p. 1172, § 6.)

§ 9-17-156. Exemption from taxation and certain gas deemed injected.

subject to any privilege or other tax on production, severance, extraction or withdrawal of gas that has been injected into a storage facility when such gas is extracted or withdrawn from such storage facility, and, specifically, no such gas shall be subject to taxation under the provisions of Sections 9-17-25 through 9-17-31 or under the provisions of Article 1, Chapter 20 of Title 40. All hydrocarbons extracted or withdrawn from the underground reservoir which were not injected, including any oil, condensate or natural gas liquids, shall be subject to applicable severance taxes under Sections 9-17-25 through 9-17-31 and under Article 1, Chapter 20 of Title 40.

(Acts 1992, No. 92-564, p. 1172, § 7.)

§ 9-17-157. Secondary or tertiary operations. [Historical Notes](#)

Nothing in this article shall apply to the conduct of gas storage operations as a part of or in conjunction with any secondary or tertiary recovery methods being utilized with respect to a unit pool in a unit area heretofore or hereafter established by the board pursuant to Article 3 of this chapter; and the board shall not allow the creation or operation of a storage facility pursuant to this article within any underground reservoir where such secondary or tertiary recovery methods are being utilized.

(Acts 1992, No. 92-564, p. 1172, § 8.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

In 2001, the Code Commissioner inserted "of this chapter" for ", Chapter 17, Title 9" after "Article 3" for clarity.

Code of Alabama 1975, Sections 40-20-1 through 40-20-2

§ 40-20-1. Definitions. [Historical Notes](#) [Annotations](#)

For the purpose of this article, the following terms shall have the respective meanings ascribed by this section:

- (1) Department. The state Department of Revenue.
- (2) Annual. The calendar year or the taxpayer's fiscal year, when permission is obtained from the department to use a fiscal year as a tax period in lieu of a calendar year.
- (3) Value. The sale price or market value at the mouth of the well. If the oil or gas is exchanged for something other than cash, if there is no sale at the time of severance or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the department shall determine the value of the oil or gas subject to the tax hereinafter provided for, considering the sale price for cash of oil or gas of like quality.
- (4) Oil. Crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the well.
- (5) Gas. All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subdivision (4) above.
- (6) Severed. The extraction or withdrawing from the soil or water or from below the surface of the soil or water of any oil or gas, whether such extraction or withdrawal shall be by natural flow, mechanically enforced flow, pumping, or any other means employed to get the oil or gas from the soil or water or from below the surface of the soil or water.
- (7) Person. Any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, and any other group or combination acting as a unit, and the plural as well as the singular number.
- (8) Producer. Any person engaging or continuing in the business of oil or gas production, which, for the purpose of this article, includes the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas by taking it from the soil or waters, or from beneath the soil or waters, of the State of Alabama, and further includes receiving money or other valuable consideration as royalty or rental for oil or gas produced or because of oil or gas produced, whether produced by him or by some other person on his behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his account or a payment in money or other valuable consideration.
- (9) Submerged lands. All lands within the territorial jurisdiction of the State of Alabama that are continuously or intermittently covered by marine or marine influenced waters and are below the mean high tide mark on all islands and land adjacent to the Mississippi Sound, Mobile Bay, Bon Secour Bay, Wolf Bay, Arnica Bay, Bay La Launch, and Perdido Bay; and excludes all areas upstream of the confluence of the Mississippi Sound, Mobile Bay, Wolf Bay and Perdido Bay with their natural tributaries.
- (10) Offshore drilling or production facilities. Barges, platforms or other drilling or production facilities located on submerged lands to drill or to produce oil or gas.
- (11) Offshore production. Gas or oil produced from offshore drilling or production facilities from wells located on submerged lands within the territorial jurisdiction of the State of Alabama.
- (12) Discovery well. Any well capable of producing oil and/or gas from a single pool in which a well has not been previously completed as a well capable of producing.
- (13) Development wells. All oil and/or gas producing wells other than discovery wells and replacement wells.
- (14) Onshore well. Any oil or gas well that is drilled in an area other than submerged lands as defined herein.
- (15) Replacement wells. A well drilled on a drilling and/or production unit to replace another well which is drilled in the same unit and completed in the same pool.
- (16) Commenced. A well shall be deemed to have commenced when the well is spudded.
- (17) Completion. A well shall be deemed to be completed for purposes of this article when drilling and logging operations have ceased.

(18) Pool. As used herein, pool shall mean a single underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone in the structure is a single pool as that term is used herein.

(19) Enhanced recovery project. An oil or gas recovery project which is approved by the State Oil and Gas Board of Alabama employing one or more of the following methods:

a. Recycling, injecting or flooding a pool, or pools, or portion thereof, with air, gas, water, hydrocarbons, carbon dioxide (CO₂), or any other substance, or any combination or combinations thereof; or

b. The use of polymers, steam flooding or fire flooding.

(20) Supplemental enhanced recovery project. An enhanced recovery project in which injection of substances into a unitized area was initiated prior to January 1, 1985, and thereafter is improved by expanding or otherwise changing the unit operations associated with the project as approved by the State Oil and Gas Board of Alabama for the purpose of increasing the ultimate recovery of hydrocarbons.

(21) Incremental oil or gas production. The amount of oil or gas which will be produced as a result of a qualified enhanced recovery project and which is in excess of the amount of oil or gas which could have been produced economically and efficiently from a pool or pools or portion thereof by production methods being utilized prior to said qualified enhanced recovery project being approved by the State Oil and Gas Board of Alabama.

(22) Qualified enhanced recovery project. A qualified enhanced recovery project shall mean an enhanced recovery project or supplemental enhanced recovery project that meets all of the following criteria:

a. That the area where the enhanced recovery project or supplemental enhanced recovery project is employed has been unitized in accordance with the provisions of Article 3, Chapter 17 of Title 9, as amended.

b. That injection of substances associated with the enhanced recovery project or supplemental enhanced recovery project has been or will be implemented as an integral part of the operations of the unitized area.

c. That the enhanced recovery project or supplemental enhanced recovery project be certified by the State Oil and Gas Board of Alabama as capable of incremental oil or gas production.

d. That the enhanced recovery project or supplemental enhanced recovery project be implemented on or after January 1, 1985.

(Acts 1945, No. 2, p. 20, § 1; Acts 1983, 4th Ex. Sess., No. 83-889, § 1; Acts 1984, No. 84-328, p. 749, § 1; Acts 1985, 2nd Ex. Sess., No. 85-911, p. 182, § 1.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1984, No. 84-699 designated Acts 1984, No. 84-328 the "Onderdonk-Foshee Act."

ANNOTATIONS

CASENOTES


Generally 1 enter p

Actions 3 enter p

Valuation methods 2 enter p


1. Generally

The exclusion of royalty owners from the increase in tax under this section could encourage the development of new oil and gas wells. There being a conceivable reason to support the exclusion, the legislative enactment should not be deemed arbitrary and should be upheld. *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1 (Ala.1981), probable jurisdiction noted 102 S.Ct. 2231, 456 U.S. 970, 72 L.Ed.2d

843, affirmed in part, reversed in part 103 S.Ct. 2296, 462 U.S. 176, 76 L.Ed.2d 497, on remand 440 So.2d 1031. Mines And Minerals  87


2. Valuation methods

So long as the Revenue Department considers like-quality gas sales prices by reasonably regarding them, the Revenue Department is not constrained to determine value on the basis of like-quality sales prices and may conclude that gas should be valued by the work-back method. *State v. Phillips Petroleum Co.*, 638 So.2d 893 (Ala.1994).

The Alabama Department of Revenue has not been limited in the method that it may use to arrive at the "value" of the gas; however, any determination of value, other than the actual sale price for cash at the wellhead, may be challenged by the taxpayer on the ground that the assessment overestimates, or underestimates, the "value" or "market value." *State v. Phillips Petroleum Co.*, 638 So.2d 886 (Ala.1992), rehearing denied, on remand 638 So.2d 890. Mines And Minerals  87

3. Actions

Cited in *State v. Hickox*, 507 So.2d 947 (Ala.Civ.App.1986).

Statutory obligations relating to severance taxes were owed only to state, not to individual counties, and thus, counties had no claims against oil and gas producers for breach of statutory obligations, based upon their alleged underpayment of taxes. *Clarke County Com'n v. Pruet Production Co.*, 963 F.Supp. 1136 (S.D.Ala.1997), affirmed 149 F.3d 1195. Mines And Minerals  87

§ 40-20-2. Levy and amount of tax upon business of producing or severing oil or gas from soil, etc., generally. [Historical Notes](#) [References](#) [Annotations](#)

(a)(1) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the State of Alabama in the business of producing or severing oil or gas, as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit or for use. The amount of such tax shall be measured at the rate of eight percent of the gross value of said oil or gas at the point of production except as provided in subsequent subdivisions of this subsection.

(2) Effective May 1, 1985, and thereafter, the incremental oil or gas production produced during a given year resulting from a qualified enhanced recovery project shall be taxed at the rate of four percent of gross value at the point of production of said incremental oil or gas production. The State Oil and Gas Board of Alabama shall approve the qualified enhanced recovery project and the determination of the projected annual oil or gas production that could have otherwise been produced without the benefit of the initiation of said qualified enhanced recovery project at a hearing held pursuant to Section 9-17-7, as amended, and shall notify the Alabama Department of Revenue thereof.

(3) All wells producing 25 barrels or less of oil per day or producing 200,000 cubic feet or less of gas per day shall be taxed at the rate of four percent of gross value of said oil or gas at the point of production.

(4) All oil and gas produced from onshore discovery wells, all oil and gas produced from onshore development wells on which drilling commenced within four years of the completion date of the discovery well and producing from a depth of 6,000 feet or greater, and all oil and gas produced from onshore development wells on which drilling commenced within two years of the completion date of the discovery well and producing from a depth less than 6,000 feet shall be taxed at a rate of six percent of the gross value of said oil and gas at the point of production for a period of five years from the date production begins from said discovery and development wells, provided, that all production to receive a six percent tax rate, which is produced from discovery wells, must be from discovery wells permitted by the State Oil and Gas Board of Alabama after July 1, 1984, and that all production to receive a six percent tax rate from development wells on which drilling commenced within the required time of completion of a discovery well, which was permitted after July 1, 1984, and said

development well must also have been permitted after July 1, 1984; provided however, that the six percent tax rate applicable to a discovery well or development well shall be applicable to any replacement well drilled to replace the discovery well or the development well during the six percent five-year, tax rate period for only the remainder of the said tax rate period.

(5) All oil or gas produced by offshore production, as defined herein, at depths greater than 18,000 feet below mean sea level, shall be taxed at the rate of six percent of the gross value of said oil or gas production at the point of production.

(6) [Expired by Acts 1984, No. 84-672, p. 5, § 2. See Code Commissioner's Notes]

(7) For any well for which the initial permit issued by the Oil and Gas Board is dated on or after July 1, 1988, except a replacement well for a well for which the initial permit issued by the Oil and Gas Board is dated before July 1, 1988, the rates provided in subdivisions (1) and (5) of this subsection shall be reduced by 2 percent.

(8) For any well for which the initial permit issued by the Oil and Gas Board is dated on or after July 1, 1996, and before July 1, 2002, except a replacement well for a well for which the initial permit issued by the Oil and Gas Board is dated before July 1, 1996, the applicable rate shall be reduced by 50 percent for a period of five years commencing with commercial production after which subdivision (7) shall apply.

(b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or gas is severed from the soil or the waters, or from beneath the soil or the waters, and in its natural, unrefined or unmanufactured condition. Provided, however, that natural gas lawfully injected into oil or gas pools or reservoirs in the soil or beneath the soil or waters of the State of Alabama is exempt from this tax. Provided, further, that natural gas lawfully injected into the earth for the purpose of lifting oil or gas in the State of Alabama is exempt from this tax. However, if any gas so injected into the earth is sold for such purposes or injected into underground storage facilities as defined in Section 9-17-150 et seq., then the gas so sold or injected shall not be exempt from this tax. Natural gas lawfully vented or flared in connection with the production, treatment, or processing of oil or gas is exempt from this tax.

(c) A county, city, town or municipality of the State of Alabama shall not establish, levy, impose or collect, as a condition of doing business or otherwise, any tax, fee, license or charge whatsoever, directly or indirectly, on or with respect to the production, treating, processing, ownership, sale, storage, purchase, marketing or transportation on any oil or gas produced in the State of Alabama and on which severance taxes have been paid to the State of Alabama, or upon the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas, or upon the ownership, operation or maintenance of plants, facilities, machinery, pipelines, gathering lines or any equipment whatsoever, which are, or may be, necessary or convenient to the production, treating, processing, ownership, storage, sale, purchase, marketing or transportation of such oil or gas; provided, that nothing herein shall be construed to prohibit, limit or restrict a county, city, town or municipality from imposing and collecting ad valorem taxes on any property, real or personal, not otherwise now exempted by law; further, the limitation herein imposed upon counties, cities, towns and municipalities shall not apply to any county, city, town or municipality which does not receive a share of the severance tax levied upon production other than offshore production as defined in Section 40-20-1 under the provisions of this article. Said limitation herein imposed upon counties, cities, towns and municipalities shall remain in full force and effect in regard to offshore production as defined in Section 40-20-1.

(d) Nothing contained herein shall be deemed to limit or to enlarge the authority of a county, city, town or municipality to levy taxes or licenses on oil refining facilities located therein or on the suppliers of services or goods not including oil or gas to those persons engaging in the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas. Provided, however, no such taxes or licenses shall be levied on offshore drilling or production facilities as defined in Section 40-20-1.

(e) In all cases of production of oil from unit operations as authorized and approved by the State Oil and Gas Board of Alabama, for purposes of computing the per well production aforesaid, the aggregate production of oil from the entire unit shall be divided by the number of wells within the unit, including injection, disposal and other wells utilized in unit operations, and the quotient thereof shall be deemed and declared to be the number of barrels of oil produced from each well in such unit regardless of the actual

amount of oil per day produced from the well, if any.
(Acts 1945, No. 2, p. 20, § 2; Acts 1971, No. 2057, p. 3317, § 1; Acts 1979, No. 79-434, p. 687, § 1; Acts 1980, No. 80-708, p. 1438; Acts 1983, 1st Ex. Sess., No. 83-39, p. 39, § 1; Acts 1983, 4th Ex. Sess., No. 83-889, p. 116, § 2; Acts 1984, No. 84-328, p. 749, § 2; Acts 1984, No. 84-660, p. 1323; Acts 1984, No. 84-672, p. 5; Acts 1985, 2nd Ex. Sess., No. 85-911, p. 182, § 1; Acts 1988, No. 88-601, p. 935, § 2; Acts 1994, No. 94-367, p. 615, § 1; Acts 1996, 2nd Ex. Sess., No. 96-877, p. 1688, § 1; Act 99-584, p. 1332, § 1.)

HISTORICAL NOTES

HISTORY

Expiration date:

Acts 1984, No. 84-672, § 2 declares that this amendatory act will expire on June 7, 1994.

Amendment notes:

The 1994 amendment, effective June 1, 1994, substituted the last four sentences of subsection (b) for the former last sentence, which provided for an exemption for natural gas lawfully injected into certain oil or gas pools or reservoirs.

The 1996 amendment, effective July 30, 1996, in subsection (a), added subdivision (8).

The 1999 amendment, effective September 1, 1999, in subsection (a), in subdivision (8) substituted "2002" for "1999".

Code Commissioner's Notes

Acts 1984, No. 84-699 designated Acts 1984, No. 84-328 the "Onderdonk-Foshee Act."

Section 1 of Acts 1988, No. 88-601 provides that this act shall be cited as the "John B. 'Johnny' Johnson Act."

Acts 1984, No. 84-672, § 2 provided that this amendatory act would expire on June 7, 1994.

Editor's Notes:

The amendments created by Acts 1984, No. 84-672, § 2 expired by the terms of Acts 1984, No. 84-672 June 7, 1994.


REFERENCES

CROSS REFERENCES

As to additional tax on gas and oil produced, for purposes of enforcing Chapter 17 of Title 9, see § 9-17-25 et seq.

LIBRARY REFERENCES

American Digest System:

Mines and Minerals  87.

Corpus Juris Secundum:

C.J.S. Mines and Minerals §§ 334, 373-374.

ANNOTATIONS

CASENOTES

Calculation of production 4 enter p
Constitutionality 1 enter p
Construction 2 enter p
Exempt gas within section 3 enter p
Particular circumstances 6 enter p
Valuation of gas 5 enter p

1. Constitutionality

Since 1945, Alabama has imposed a severance tax on oil and gas extracted from wells located in the state. In 1979 an amendment to this section (Act No. 79-434) increased the severance tax from four percent to six percent of gross value at the point of production. The amendment also prohibited producers from passing the tax increase through to consumers. Act No. 80-708 repealed such pass-through prohibition. However, the Alabama supreme court determined that the act was valid in its entirety (see *Eagerton v. Exchange Oil & Gas Corp.*, 404 So.2d 1 (Ala.1981)). The United States Supreme Court eventually decided that the pass-through provision of Act No. 79-434 was not unconstitutional but was preempted by federal law over wholesale gas in interstate commerce (see *Exxon Corp. v. Eagerton*, 103 S.Ct. 2296, 76 L.Ed.2d 497 (1983)). *Eagerton v. Exchange Oil and Gas Corp.*, 440 So.2d 1031 (Ala.1983).

As to constitutionality of section, see *Union Oil Company of California v. Eagerton*, 426 So.2d 814 (Ala.1982), appeal dismissed 104 S.Ct. 45, 464 U.S. 801, 78 L.Ed.2d 67, appeal dismissed 104 S.Ct. 46, 464 U.S. 801, 78 L.Ed.2d 67.

2. Construction

For interpretation of 1979 amendment to this section, see *Eagerton v. Terra Resources, Inc.*, 426 So.2d 807 (Ala.1982).

The smackover provisions of this section should logically be read in conjunction with the preceding sentence and should only be construed as a limitation on the taxing of new wells. *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1 (Ala.1981), probable jurisdiction noted 102 S.Ct. 2231, 456 U.S. 970, 72 L.Ed.2d 843, affirmed in part, reversed in part 103 S.Ct. 2296, 462 U.S. 176, 76 L.Ed.2d 497, on remand 440 So.2d 1031.

Provisions of this section apply statewide by giving a statewide incentive to create new wells except in the smackover formation at a depth of 15,000 to 15,800 feet. *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1 (Ala.1981), probable jurisdiction noted 102 S.Ct. 2231, 456 U.S. 970, 72 L.Ed.2d 843, affirmed in part, reversed in part 103 S.Ct. 2296, 462 U.S. 176, 76 L.Ed.2d 497, on remand 440 So.2d 1031.

The smackover provision was not intended by the Legislature to be a limitation which affected the entire chapter. *Eagerton v. Exchange Oil and Gas Corp.*, 404 So.2d 1 (Ala.1981), probable jurisdiction noted 102 S.Ct. 2231, 456 U.S. 970, 72 L.Ed.2d 843, affirmed in part, reversed in part 103 S.Ct. 2296, 462 U.S. 176, 76 L.Ed.2d 497, on remand 440 So.2d 1031.

3. Exempt gas within section

Language in section which refers to "all wells," not "all oil wells," and to "said oil or gas," does not exempt from the two percent increase of this section (pursuant to Act No. 79-434) gas produced at wells which do not also produce the stated amount of oil. *Eagerton v. Terra Resources, Inc.*, 426 So.2d 807 (Ala.1982).


It is implausible that the Legislature would enact a statute to increase the severance tax on oil and gas and then obliquely exempt all gas from the increase except for gas which happens to come from wells which also produce substantial quantities of oil. Such a broad exemption should be clearly set out if such is the legislative intent for nearly all of the gas producers' wells would be exempt. *Eagerton v. Terra Resources, Inc.*, 426 So.2d 807 (Ala.1982).

4. Calculation of production

By the phrase "divided by the number of wells within the unit, including injection, disposal and other wells utilized in unit operations" in subsection (e) of this section, the Legislature intended to include all wells within the unit in the calculation of per well production; thus, the taxpayer does not have to show specific "utilization" of each well on a daily basis -- only that the well was necessary for the overall plan for maximum recovery. *State v. Hickox*, 507 So.2d 947 (Ala.Civ.App.1986).


5. Valuation of gas

So long as the Revenue Department considers like-quality gas sales prices by reasonably regarding them, the Revenue Department is not constrained to determine value on the basis of like-quality sales prices and may conclude that gas should be valued by the work-back method. *State v. Phillips Petroleum Co.*, 638 So.2d 893 (Ala.1994).

The Alabama Department of Revenue has not been limited in the method that it may use to arrive at the "value" of the gas; however, any determination of value, other than the actual sale price for cash at the wellhead, may be challenged by the taxpayer on the ground that the assessment overestimates, or underestimates, the "value" or "market value." *State v. Phillips Petroleum Co.*, 638 So.2d 886 (Ala.1992), rehearing denied, on remand 638 So.2d 890. *Mines And Minerals*  87

6. Particular circumstances

Cited in *Amoco Prod. Co. v. White*, 453 So.2d 358 (Ala.1984).

Oil company was entitled to lower tax, on oil and gas produced through qualified enhanced recovery project, from date after which State Oil and Gas Board certified project and approved production numbers, rather than later date on which Board entered certification and approval order. *State v. Union Oil Co. of California*, 686 So.2d 284 (Ala.Civ.App.1996). *Mines And Minerals*  87

Director and Board Members

STATE OIL AND GAS BOARD OF ALABAMA

OIL AND GAS BOARD

Gaines C. McCorquodale, Chairman
M. Stephen Dampier, Member
Rebecca Wright Pritchett, Member
Berry H. (Nick) Tew, Jr., Secretary
S. Marvin Rogers, Counsel



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Berry H. (Nick) Tew, Jr.
Oil & Gas Supervisor

May 16, 2005

To: Mr. Calvin J. Cooper
Department of Examiners of Public Accounts

Re: **Item No. 1:** Board Members and Officials of State Oil and Gas Board of Alabama

Name	Address	Date of appointment	Expiration of Term
Dr. Berry H. (Nick) Tew, Jr. State Oil & Gas Supervisor	State Oil & Gas Board P.O. Box 869999 Tuscaloosa, AL 35486-6999	October 2002	NA
Gaines McCorquodale, Board Chairman (Chairman since 1993)	P.O. Box 1137 Jackson, AL 36545 251/246-9015 Fax 251/246-3247 mcclaw@mindspring.com	February 8, 2000	October 31, 2005
M. Stephen Dampier, Board Member	P.O. Box 996 Mobile, AL 36601 251/928-9160 Fax 251/928-2834 stevedampier@cs.com	December 4, 2001	October 31, 2007
Rebecca Wright Pritchett, Board Member	Sirote & Permutt, P.C. P.O. Box 55727 Birmingham, AL 35255 205/930-5140 Fax 205/930-5101 rpritchett@sirote.com	October 11, 2003	October 10, 2009

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